

EXHIBIT 7

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF NEW YORK

3 ESTATE OF JLA,

4 Plaintiff,

5 -vs-

Case No.:
5:22-cv-00287
MAD-ATB

6 THE TOWN OF DEWITT,
7 LUCAS BYRON, Individually,
8 MATTHEW MENARD, Individually,
9 COUNTY OF ONONDAGA,
10 AMY BOLLINGER, Individually and
11 COREY FIKE, Individually,

12 Defendants.

13 DEPOSITION

14 WITNESS: LUCAS BYRON

15 DATE: Wednesday, January 10, 2024

16 START TIME: 10:03 a.m.

17 END TIME: 1:02 p.m.

18 LOCATION: Sugarman Law Firm, LLP
19 211 West Jefferson Street
20 Second Floor
21 Syracuse, New York 13202

22 BEFORE: Elyse M. Addabbo
23 Court Reporter and Notary Public

24 JOB NUMBER: 22202

25

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1 I N D E X O F R E Q U E S T S

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3 1. Page 24, Line 4:

4 MR. ZUKHER: I'm going to make a request
5 right now for any and all personnel complaints
6 that have been filed against this officer.

7 MR. MULLIN: Why don't you make an index,
8 and then we'll address them, please. Thank
9 you.

10 2. Page 25, Line 17:

11 MR. ZUKHER: I'm going to make a request
12 for those, too, if there's any formal
13 reprimands. Would you add that to the list,
14 please?

15 3. Page 80, Line 11:

16 MR. ZUKHER: I would make a request,
17 specific request, for any and all information
18 pertaining to the removal of this officer from
19 duty as a result of this incident, all
20 documents.

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FEDERAL STIPULATIONS

IT IS HEREBY STIPULATED AND AGREED, by and between the attorneys for the respective parties, that the presence of the Referee be waived;

IT IS FURTHER STIPULATED AND AGREED that the witness shall read and sign the minutes of the transcript within 30 days upon receipt, and that the filing of the transcript be waived;

IT IS FURTHER STIPULATED AND AGREED that all objections, except as to form, are reserved until the time of trial;

IT IS FURTHER STIPULATED AND AGREED that this Deposition may be utilized for all purposes as provided by the Federal Rules of Civil Procedure;

AND FURTHER STIPULATED AND AGREED that all rights provided to all parties by the Federal Rules of Civil Procedure shall not be deemed waived and the appropriate sections of the Federal Rules of Civil Procedure shall be controlling with respect thereto.

1 THE REPORTER: For the transcript order,
2 is it a split and provide?

3 MR. MULLIN: It's a split and provide.

4 MR. ZUKHER: Yeah.

5 MR. MULLIN: That's what we usually do.

6 THE REPORTER: Is that okay with
7 everybody? Okay.

8 MR. MULLIN: And one other thing for the
9 record, I think the defendants have agreed
10 that one objection covers everyone's
11 objections.

12 MR. BANAS: That's fine by me.

13 MR. SICKINGER: Yeah.

14 MR. ZUKHER: Fine by me, I have no
15 objection.

16

17 L U C A S B Y R O N, having been called as a witness,
18 being duly sworn, testified as follows:

19 EXAMINATION

20 BY MR. ZUKHER:

21 Q. Sergeant Byron, good morning. My name is
22 Attorney David Zukher. I represent the estate of JLA in
23 this matter. I'm going to be asking you some questions
24 today. None of these questions are meant or designed to
25 trick you in any way or to fool you in any way or to

1 flimflam in any way. I just want to get to the bottom of
2 what happened on that day. Okay?

3 A. Yes.

4 Q. And why it happened. A couple of ground
5 rules. First, you got to keep your answers verbal,
6 because this young lady to my right and maybe your left
7 is taking down everything we're saying.

8 A. Yes.

9 Q. Number two, you can take a break at any time.
10 There's only one caveat to that rule. You have to answer
11 the pending question. If there's a pending question, you
12 must answer, and then we can take our break. Okay?

13 A. Okay.

14 Q. Besides that, let's start. Sir, please state
15 your full name for the record.

16 A. Lucas Byron, L-U-C-A-S, B-Y-R-O-N.

17 Q. Any middle initial, sir?

18 A. J.

19 Q. Okay. And what's that stand for?

20 A. James.

21 Q. Okay. And, sir, you're currently employed?

22 A. Yes.

23 Q. And where do you work?

24 A. Town of Dewitt Police Department.

25 Q. Okay. And how long have you been so employed?

1 A. I've been employed with Dewitt for, let's see,
2 fifteen years.

3 Q. And was that your first job out of the police
4 training academy?

5 A. No. I worked for the Village of Cazenovia
6 Police Department prior to that.

7 Q. Okay. How long did you work there?

8 A. Three or four years.

9 Q. And can you tell me the approximate time frame
10 for that?

11 A. 2005 to 2008.

12 Q. Okay.

13 A. 2009.

14 Q. And what were your duties and responsibilities
15 with that agency prior to you joining the Dewitt Police?

16 A. I was a patrol officer.

17 Q. Okay. Handing out tickets, things like
18 that --

19 A. Yeah, responding.

20 MR. MULLIN: Wait until he finishes the
21 question.

22 Q. Is it pretty much the same thing you were
23 doing on behalf of the Dewitt Police?

24 A. Yes, as far as patrol when I first got hired.

25 Q. Okay. And then you were promoted, right, you

1 were promoted to sergeant?

2 A. With the Town of Dewitt, I was promoted to
3 investigator and then eventually sergeant.

4 Q. When were you promoted to investigator, sir?

5 A. I believe I was promoted in 2015.

6 Q. And then to sergeant, your second promotion,
7 sir?

8 A. Sergeant was probably 2019 or 2020. I think
9 2020.

10 Q. Okay. Sir, did you review any documents prior
11 to this deposition?

12 A. Yes.

13 Q. Okay. What did you review, sir?

14 A. My incident report.

15 Q. Okay. And are those the only documents that
16 you reviewed? Did you make any other notes or any
17 other -- you know, create any other documents based on
18 your review of that document?

19 A. No, sir.

20 Q. Okay. Sir, we talked a little bit about the
21 first place you worked. I imagine you went to the police
22 academy prior to that?

23 A. Yes.

24 Q. Okay. When did you attend the police academy,
25 sir?

1 A. I forget the dates off the top of my head.

2 Q. No problem. Do you remember how long
3 approximately it was, how long was the training?

4 A. Approximately six months.

5 Q. Okay. And, sir, while you've been employed by
6 the Dewitt Police or your prior employment -- I think
7 Cazenovia, you said?

8 A. Yes.

9 Q. Okay. Did you receive any specialized
10 training, any specialized training besides your training
11 with the schooling for the police, the police, you know,
12 the eight weeks of training?

13 A. Yeah, the general --

14 Q. Right.

15 A. -- academy?

16 Q. I can't think of the right word.

17 Besides your training to become a police
18 officer, after you became a police officer, did you have
19 any specialized training after that?

20 A. Yes.

21 Q. In what kind of areas?

22 A. All different kinds of areas.

23 Q. Let's start and you can tell me all about it.

24 To the best of your recollection, briefly what
25 specialized trainings have you received?

1 A. I've gone through schools for weapons of mass
2 destruction through Homeland Security, gone through
3 schools for instructor development, I've gone through
4 schools for a number of different things, annual
5 trainings. There's firearms instructor, PT instructor.

6 Q. PT is physical therapy, right? Nobody likes
7 to do PT.

8 A. Yeah, physical training. Yeah. Just there's
9 a long list of trainings --

10 Q. A long list?

11 A. -- that I've gone through.

12 Q. Would it be fair to say that in your position
13 with the Dewitt Police, you pretty much have to keep up
14 with your training?

15 A. Yes.

16 Q. With weapons and other things --

17 A. Yes.

18 Q. -- right? Okay.

19 Sir, did you receive any specialized training
20 with regard to de-escalation techniques?

21 A. Yes.

22 Q. Okay. What training did you receive, sir?

23 A. There's training in the academy itself.

24 Q. Okay.

25 A. Annual training. There's reality-based

1 training that I've gone through. There's different
2 scenario-based training that I've gone through through
3 the years.

4 Q. Okay. So prior to March 4th, 2021, you
5 received some significant training with regard to
6 de-escalation?

7 MR. MULLIN: Object to the form. Go
8 ahead, you can answer.

9 Q. You can answer.

10 A. Yes.

11 Q. It's the only objections in these depositions,
12 and so long as you understand my question, you can answer
13 it unless your attorney tells you not to.

14 Sir, have you received any specialized
15 training in Sims, S-I-M-S, less-than-lethal use of force
16 techniques?

17 A. As far as Sims training with Sims
18 firearms --

19 Q. Yes.

20 A. -- Simunition training?

21 Q. Yes.

22 A. Yes.

23 Q. What type of firearm is that, sir?

24 A. A Simunition is a firearm that's designed to
25 fire a marking round, or actually some of them do

1 non-marking rounds, as well, but it's utilized for less
2 lethal training options as use of force.

3 Q. If you're going to use force, that's
4 potentially a less lethal use of force?

5 A. No.

6 MR. MULLIN: Object to the form of that
7 question. Go ahead.

8 Q. Go ahead, sir.

9 A. No. Simunitions is a training tool to be used
10 for reality-based training.

11 Q. Okay. And so what kind of scenarios are they?

12 A. They range from any type of scenario that you
13 can encounter as a police officer.

14 Q. Okay. And that's supposed to give you
15 practice for when you do encounter the scenario in the
16 field?

17 A. Yes.

18 Q. Okay. And you underwent that training?

19 A. Yes.

20 Q. Do you recall when?

21 A. Numerous times throughout my career.

22 Q. Sir, how about any specialized training with
23 regard to dealing with mentally ill people, mentally ill
24 individuals, have you received any specialized training
25 with regard to that?

1 A. Yes.

2 Q. Can you tell me about that, please?

3 A. It's, again, through scenario-based training.

4 Q. Okay.

5 A. In the academy, we did mental health
6 training --

7 Q. Okay.

8 A. -- and annual trainings.

9 Q. Prior to March 4th, 2021, when was the last
10 time you received any training with regard to dealing
11 with people with mental health issues?

12 A. I can't recall off the top of my head.

13 Q. Would it have been more than a year?

14 A. Unlikely.

15 Q. Okay. But it could be as much as a year?

16 MR. MULLIN: Object to the form.

17 Q. You can answer, sir.

18 A. Could be, but again, it's --

19 Q. Do you recall what the training was about, the
20 last one you received?

21 A. Not specifically, no.

22 Q. Thank you, sir.

23 Do you know what a pick-up order is?

24 A. Yes.

25 Q. What is a pick-up order, sir?

1 A. It's an order originating from a doctor or
2 mental health provider indicating that the person is in
3 need of mental health care.

4 Q. Okay. And have you ever executed pick-up
5 orders before in your position with the Dewitt Police?

6 A. Yes, we have.

7 Q. Okay. How many times have you participated in
8 that exercise?

9 A. I can't recall off the top of my head.

10 Q. And would it be fair to say that once you get
11 a mental health order, that provides some form
12 of -- strike all of that. I don't know what I want to
13 say.

14 When you get a pick-up order for an
15 individual, a mental health pick-up order, what does that
16 signify to you as a police officer?

17 MR. MULLIN: Object to the form.

18 A. When a mental health order is sent to us, I
19 guess it would most likely indicate that the individual
20 needs to see a mental health professional.

21 Q. Okay. Would it be fair to say a mental health
22 pick-up order indicates that there's a -- some kind of
23 mental issue going on?

24 A. Yes.

25 Q. And that when you receive that pick-up order,

1 you become aware of that, would that be fair to say?

2 A. Yes.

3 Q. Okay. Let me ask you this: Did you receive
4 any pick-up orders from St. Joseph's Hospital in this
5 case prior to the shooting?

6 A. Me specifically, no.

7 Q. Were you aware that they were trying to get
8 one?

9 A. At the time of the incident, no.

10 Q. Thank you, sir.

11 Would it be fair to say, sir, that if you had
12 gotten a mental health pick-up order, that would have
13 provided you with some additional information, would that
14 be fair to say?

15 MR. MULLIN: Object to the form.

16 Q. You can answer.

17 A. Possibly, yes.

18 Q. Okay. I understand. What information would
19 you have been provided that you didn't have at the time
20 of the shooting?

21 MR. MULLIN: Object to the form.

22 Q. You can answer.

23 A. I'm not sure.

24 Q. Okay. Would it have advised you that the
25 person had mental health issues?

1 MR. MULLIN: Object to the form.

2 A. A mental health order would advise that there
3 are mental health issues, yes.

4 Q. Okay. And that's information that you didn't
5 have at the time of the shooting, would that be fair to
6 say?

7 A. No, that wouldn't be fair to say.

8 Q. Okay. What information did you have at the
9 time of the shooting that JLA had experienced a mental
10 health crisis?

11 MR. MULLIN: Object to the form.

12 Q. You can answer, sir.

13 A. I was aware of JLA through prior experiences
14 with him.

15 Q. Okay. Were you aware of his medical
16 diagnoses, sir, or that he was under care and observation
17 with St. Joseph's Hospital?

18 MR. MULLIN: Object to the form.

19 A. No.

20 Q. Okay. Would it be fair to say that -- you say
21 that you knew JLA had some mental health issues based on
22 your prior interactions with JLA?

23 A. Yes.

24 Q. Okay. But certainly, a mental health pick-up
25 order indicates that there's some mental issue right now,

1 right?

2 MR. MULLIN: Object to the form.

3 A. No, not necessarily.

4 Q. Okay. What does it indicate to you?

5 MR. MULLIN: What, this fictitious order?

6 MR. ZUKHER: I haven't asked about any
7 fictitious order.

8 MR. MULLIN: Because you told --

9 MR. ZUKHER: I'm only asking him what a
10 pick-up order indicates to him in general, not
11 this pick-up order. What is a pick-up
12 order --

13 MR. MULLIN: That's what I understand.

14 Okay. I'll continue objecting to this.

15 BY MR. ZUKHER:

16 Q. You can answer.

17 A. A pick-up order indicates that a medical
18 professional has a reason to observe him or --

19 Q. Okay.

20 A. -- or anything along those lines.

21 Q. So that would have substantiated your belief
22 that he had mental health issues, would it not have?

23 MR. MULLIN: Object to the form.

24 A. I'm trying to understand your question. Could
25 you rephrase it for me?

1 Q. I guess here's what I'm asking. Let me
2 explain to you what I'm asking. You said you had some
3 prior interactions with JLA, right?

4 A. Yes.

5 Q. And based on those interactions, you suspected
6 that he had a mental illness, would that be fair to say?

7 A. Yes.

8 Q. But you didn't know that, in fact, it was a
9 clinical condition or anything else, would that be fair
10 to say?

11 A. No.

12 Q. So wouldn't, in fact, then, sir, a pick-up
13 order indicate to you now that there is a clinical
14 condition that's in play?

15 MR. MULLIN: Object to the form.

16 A. It depends, I guess.

17 Q. Depends on what, sir?

18 A. I guess there could be a mental health issue
19 in play.

20 Q. Okay.

21 A. As far as they're looking to evaluate him. I
22 don't know what their diagnosis would be.

23 Q. And would it be fair to say that would have
24 been helpful here?

25 MR. MULLIN: Object to the form.

1 Q. To know more information is better?

2 MR. MULLIN: Object to the form.

3 Q. Go ahead, sir. You can answer.

4 A. I don't know if it would have been more
5 helpful or not.

6 Q. I understand. But it could have been?

7 MR. MULLIN: Object to the form. You've
8 already asked that.

9 A. It may have been.

10 Q. Thank you, sir.

11 MR. ZUKHER: No objection asked and
12 answered. Only objections to form. I can ask
13 a thousand questions of the same --

14 MR. MULLIN: No lectures necessary.

15 MR. ZUKHER: Let's keep the objections to
16 where they're supposed to be.

17 MR. MULLIN: No lectures, Counselor.

18 MR. ZUKHER: Thank you.

19 BY MR. ZUKHER:

20 Q. Sir, do you have some policies and procedures
21 with regard to the Dewitt Police when you respond to a
22 mental health crisis call?

23 A. Yes.

24 Q. Have you been trained in any type of
25 negotiation techniques or are you -- do you have any

1 certification to be a negotiator in an emergency
2 situation?

3 MR. MULLIN: Object to the form.

4 Q. Go ahead, sir.

5 A. As far as a specific negotiation
6 certification, no, I do not.

7 Q. Okay. Have you received any training in that
8 as part of your prior police training experience?

9 A. I have received training in interview,
10 interrogation, generally speaking, and interacting with
11 individuals in public, as well.

12 Q. But you're not in any way certified to do
13 that?

14 A. I would believe that that would be covered
15 under my police certification.

16 Q. Have you ever been called upon by your
17 department to act in the role of a negotiator?

18 A. I guess the argument could be made that I've
19 been called for services --

20 Q. As far as negotiation. No, I mean a formal
21 negotiation with a crisis where you have a standoff with
22 somebody?

23 MR. MULLIN: Object to the form.

24 Q. For example, a crisis like a standoff with
25 somebody where you need to formally negotiate with that

1 person that's either armed or sometimes they lock
2 themselves in their home, if at all, in police cases?

3 MR. MULLIN: Object to the form.

4 Q. You can answer, sir.

5 A. Again, I would argue that any call for service
6 could turn into that.

7 Q. Okay. Let me ask you this, then: Do you have
8 any specific certification hanging on your wall that
9 you've been certified as a negotiator?

10 A. I don't hang any certifications on the wall.

11 Q. Do you have any certificates like that?

12 A. Like I said, I don't have any specific
13 certification in negotiation.

14 Q. Thank you, sir.

15 And please, I have to ask: Have you,
16 yourself, ever received a personnel complaint?

17 A. Yes.

18 Q. Okay. How many times, sir?

19 A. I couldn't tell you.

20 Q. More than five times?

21 A. I can't recall.

22 Q. Okay. More than ten times?

23 A. Again, I don't know.

24 Q. Couldn't even give me a ballpark figure?

25 MR. MULLIN: Object to the form.

1 A. As far as personnel complaints, I don't know
2 if I've been notified every time there has been a
3 personnel complaint, so I couldn't --

4 MR. ZUKHER: I'm going to make a request
5 right now for any and all personnel complaints
6 that have been filed against this officer.

7 MR. MULLIN: Why don't you make an index,
8 and then we'll address them, please. Thank
9 you.

10 BY MR. ZUKHER:

11 Q. Has a complaint against you ever been founded?

12 A. Not that I've been aware of, been made aware
13 of.

14 Q. Okay. What are the types of complaints that
15 you've received, sir?

16 A. Typical complaints that have been -- that I've
17 been made aware of are just individuals that have a
18 problem with the way that an interaction has gone.

19 Q. Okay. And various parts of that
20 interaction --

21 A. Yes.

22 Q. -- whether you took them into custody or maybe
23 use -- some people -- has anybody alleged excessive use
24 of force?

25 A. I don't recall any instances where anybody's

1 specifically alleged any excessive use of force.

2 Q. Well, you show up here on somebody's side and
3 somebody else is always upset.

4 MR. MULLIN: Object to the form.

5 Q. Have you ever been censured or received any
6 department censure with regard to your duties as a police
7 officer for the Town of Dewitt Police?

8 A. I'm not sure what you mean by censure.

9 Q. A censure is a formal reprimand, either a
10 written or a verbal reprimand.

11 MR. MULLIN: Object to the form.

12 A. I don't recall.

13 Q. Don't recall whether you were ever
14 reprimanded?

15 A. I don't recall if there was any formal
16 reprimand for something --

17 MR. ZUKHER: I'm going to make a request
18 for those, too, if there's any formal
19 reprimands. Would you add that to the list,
20 please?

21 Q. Sir, prior to March 4th, 2021, have you ever
22 been involved in an officer shooting and discharging your
23 weapon?

24 MR. MULLIN: Object to the form.

25 Q. Where you either discharged your weapon or an

1 individual or civilian was involved?

2 MR. MULLIN: Why don't we slow down and
3 ask one question? You've got three questions
4 there.

5 Q. Strike all of that.

6 Sir, have you ever discharged your service
7 weapon in the line of duty while you were employed by the
8 Dewitt Police?

9 A. Yes.

10 Q. When?

11 A. Destruction of animals for -- if they were
12 injured or anything along those lines, like deer, dogs,
13 things like that. As far as discharging it for training
14 purposes, I've done that previously.

15 Q. I'm sure you've discharged a few rounds for
16 training purposes?

17 A. Yes.

18 Q. How about have you ever discharged your weapon
19 at another individual?

20 A. Only in this incident.

21 Q. Only in this incident. Thank you, sir.

22 Now, I have a feeling I know the answer to
23 this question, but have you ever met or spoken with JLA
24 prior to March 4th, 2021?

25 A. Yes.

1 Q. Okay. Can you describe when those
2 interactions occurred?

3 A. I can't recall the exact dates.

4 Q. Okay. Was it -- on how many occasions would
5 you say you had a chance to interact with JLA?

6 A. Off the top of my head, at least two.

7 Q. Okay. Can you describe those incidents for
8 me? What were they? What was your interaction with him
9 like, and what was the incident about?

10 A. One incident was he was filming outside of a
11 bank in Jamesville.

12 Q. Okay.

13 A. And cover was called in as a suspicious
14 person.

15 Q. Okay. And did you make an arrest in that
16 case?

17 A. No.

18 Q. Okay. What was JLA doing?

19 A. JLA was filming outside of M&T Bank.

20 Q. Okay. Did he tell you why?

21 A. I believe he just said that he was recording
22 and didn't really go any -- into any further detail on
23 that.

24 Q. And how about the second incident? You
25 mentioned two incidents.

1 A. The other one that I can recall or that comes
2 to mind was an incident where he was in our town hall.

3 Q. Okay. And what was he doing then?

4 A. Again, he was recording.

5 Q. Video recording?

6 A. Yeah.

7 Q. And how long would you say you interacted with
8 him during those incidents?

9 A. Not very long.

10 Q. Okay. Did you have any opportunity to ask him
11 some questions?

12 A. Yes.

13 Q. And he gave you some responses?

14 A. Yes.

15 Q. And based on those responses, you formulated
16 the opinion that he could have some mental health issues,
17 would that be fair to say?

18 MR. MULLIN: Object to the form.

19 A. Yeah, behavioral or mental health issues.

20 Q. Right.

21 A. I can't really diagnose what --

22 Q. But you suspected based on your interaction?

23 MR. MULLIN: Object to the form.

24 Q. Correct?

25 MR. MULLIN: Object to the form.

1 Q. Let me rephrase the question.

2 Based on the two interactions you had with
3 JLA, did you suspect that he had mental health issues?

4 MR. MULLIN: Object to the form.

5 A. I would say either -- again, I can't diagnose
6 anybody or anything like that.

7 Q. I'm not asking that.

8 MR. MULLIN: That's what you're asking
9 him to do, is to diagnose.

10 MR. ZUKHER: No. I asked him based on
11 his interactions with JLA, that he himself
12 believed that JLA had some mental health
13 issues. I'm not asking for a diagnosis at
14 all.

15 MR. MULLIN: I'll object --

16 MR. ZUKHER: You can note your objection
17 all day long.

18 A. I would say that he had some -- in my opinion,
19 he had some behavioral issues that may be stemming from
20 mental health issues.

21 Q. You understand what I'm asking, right, sir?

22 MR. MULLIN: Object to the form. Please
23 don't engage in conversation.

24 MR. ZUKHER: I'm not in engaging in
25 conversation. I asked him if he understood

1 what I was asking.

2 Madam Court Reporter, read it back.

3 MR. MULLIN: There's no need to waste
4 time. Let's go.

5 MR. ZUKHER: I asked him a question
6 whether he understood what I was asking.

7 MR. MULLIN: That's not what you did.

8 MR. ZUKHER: Yeah.

9 BY MR. ZUKHER:

10 Q. All I'm asking you, sir, is just a general
11 question, which is: Based on your two interactions you
12 had with JLA where you were called to respond to an area
13 where he was filming, and based on your
14 interactions -- and you said you spoke to JLA, correct?

15 A. Yes.

16 Q. Based on those interactions, did you form an
17 opinion yourself -- I'm not asking for a clinical
18 diagnosis and I'm not asking for you to be a doctor, but
19 you do have some personal observations that you make as a
20 police officer, right, and as a normal human being,
21 right?

22 A. Yes.

23 Q. Did you -- and you said you made some of
24 those, right, observations?

25 A. Yes.

1 Q. Right. And in those observations, based on
2 your two interactions with JLA, would it be fair to say
3 that, in your own mind, you believed him to have some
4 mental health issues?

5 MR. MULLIN: Object to the form.

6 A. As I said, I believed he had some behavioral
7 issues. I don't know if they're necessarily stemming
8 from mental health.

9 Q. And did you know whether they were clinical or
10 not? Did you know whether he had been diagnosed with
11 anything?

12 MR. MULLIN: Object to the form.

13 Q. At any point in this?

14 MR. MULLIN: Object to the form of that
15 question.

16 Q. During the entirety of your interactions with
17 JLA, you said you had two prior interactions with him and
18 you had the interaction on March 4th, right?

19 A. Yes.

20 Q. Three prior interactions with JLA, correct?

21 A. Between the incident that we're discussing and
22 the other two incidents, yes.

23 Q. Right. Is that the totality of your
24 interactions with JLA?

25 A. As far as my recollection personally dealing

1 with him, yes.

2 Q. Okay. Within the time that you interacted
3 with JLA, would it be fair to say that based on your
4 interactions with him prior to March 4th, 2021, you had
5 formed an opinion, not a clinical one or anything else,
6 that he could potentially have some mental health issues?

7 MR. MULLIN: Object to the form.

8 A. Potentially, yes.

9 Q. Thank you, sir.

10 And let me ask you this: Did you -- on
11 March 4th, did you relay that information to anyone?

12 A. No, I did not.

13 Q. Thank you, sir.

14 And when I talk about it -- when I say about
15 information, I mean the information that your belief that
16 he had some mental health issues, did you relay that to
17 anyone?

18 A. Again, I can't diagnose or --

19 Q. I'm not asking for that. I'm not asking for a
20 diagnosis.

21 MR. MULLIN: Please don't argue with the
22 witness.

23 MR. ZUKHER: I'm not arguing with the
24 witness.

25 Q. What I'm asking, sir --

1 MR. MULLIN: Excuse me just one second.

2 Can you keep your voice up? I have a hearing
3 issue and I can't hear, and I don't know
4 how --

5 MR. ZUKHER: Sure.

6 MR. BANAS: I'm a little further away,
7 and I'm having an issue. For both of us.

8 MR. ZUKHER: I'm blind in one eye, so I
9 know about a disability, believe me.

10 Madam Court Reporter, would you read back
11 my last question?

12 (Requested portion read back.)

13 BY MR. ZUKHER:

14 Q. I'm asking you whether you relayed what you
15 believed to anyone, any other police officer on the scene
16 or otherwise on March 4th, 2021?

17 MR. MULLIN: Object to the form.

18 A. No, I did not relay any information regarding
19 my opinion.

20 Q. Thank you, sir.

21 Sir, on March 4th, 2021, you had been working
22 with the Dewitt Police for a couple years now, right,
23 several years?

24 A. Yes.

25 Q. And you're familiar with the area of Apulia

1 Road --

2 A. Yes.

3 Q. -- in Jamesville?

4 Have you ever patrolled that area before?

5 A. Yes.

6 Q. As part of your duties with the Dewitt Police?

7 A. Yes.

8 Q. Okay. Are you familiar, sir, that the Town of
9 Dewitt has certain rules and regulations with regard to
10 an emergency incident or a serious incident?

11 MR. MULLIN: Object to the form. Again,
12 you're tailing off. I can't hear you.

13 MR. ZUKHER: Again, noted.

14 A. Can you rephrase the question for me, please?

15 Q. Sir, are you aware that your department has
16 certain rules and regulations regarding what must occur
17 in a serious incident?

18 A. Yes.

19 Q. Okay. Are you familiar with those rules, sir?

20 A. Yes. I have a working knowledge of them,
21 yeah.

22 Q. Did you have a working knowledge of those
23 rules on March 4th, 2021?

24 A. Yes.

25 Q. You're, in fact, required by your position to

1 know those rules, would that be fair to say?

2 A. To have a working knowledge of them, yes.

3 Q. Yes, you're required by your employer to have
4 a working knowledge, correct?

5 A. Correct.

6 Q. Okay. Now, sir, how were you advised of this
7 situation occurring with JLA on March 4th, 2021? How did
8 you become involved?

9 MR. MULLIN: Object to the form.

10 A. I responded after hearing radio transmissions
11 of an incident involving a number of units.

12 Q. Okay. What do you recall from that
13 transmission, sir? It was a dispatch transmission?

14 MR. MULLIN: Object to the form.

15 A. I don't recall when I first picked up on what
16 the transmissions were or whether it was from dispatch or
17 other units that were responding.

18 Q. Okay. So you don't recall?

19 A. Uh-uh.

20 Q. Okay. Were you aware, sir, that this was a
21 multi-agency response, that numerous agencies had
22 responded to the scene, including the Onondaga County
23 Sheriff's and the State Police?

24 A. Yes.

25 Q. Thank you, sir.

1 Would it be fair to say you became aware of
2 that right away?

3 MR. MULLIN: Object to the form.

4 Q. When did you become aware of that, during the
5 beginning of the incident, when you heard the radio
6 transmission, or at some other point?

7 A. When I became aware of the radio
8 transmissions.

9 Q. So would it be fair to say right from the
10 beginning, you knew that this was a multi-agency
11 response, would that be fair to say?

12 A. From the -- from my involvement, I was aware
13 that there were a number of agencies.

14 Q. Okay. I'm curious about the timing of that,
15 sir. Did you know that at the beginning of the call?

16 MR. MULLIN: Object to the form.

17 A. I don't know.

18 Q. But no question at some point you become aware
19 that there's multiple agencies involved, correct?

20 A. Yes.

21 Q. This was prior to the shooting?

22 A. Yes.

23 Q. Do you know how long prior to the shooting you
24 were aware that multiple agencies were involved prior to
25 the time that you discharged your weapon at JLA?

1 A. I don't know.

2 Q. Okay. Could it have been a half an hour?

3 A. I could only speculate.

4 Q. Okay. Could it have been an hour?

5 A. Again, I wouldn't feel comfortable giving a
6 time frame.

7 Q. No question, though, it was prior to the
8 shooting, correct?

9 A. Yes, I was aware that there were multiple
10 agencies prior to the shooting.

11 Q. Okay. And you responded to the scene,
12 correct, on Apulia Road?

13 A. I responded to Apulia and Coye Road.

14 Q. Okay. Did you respond by yourself, sir, were
15 you alone or was there somebody else with you in the
16 vehicle?

17 A. I was -- I had somebody else with me.

18 Q. Okay. Who was that, sir?

19 A. Investigator Menard.

20 Q. Okay. Did the two of you jointly make the
21 decision to respond?

22 A. Yes.

23 Q. Okay. And Investigator Menard, is he senior
24 to you with regard to rank in the department?

25 A. No. He's junior to me.

1 Q. I'm sorry, sir?

2 A. He's junior to me.

3 Q. He's junior.

4 A. As far as seniority goes.

5 Q. And this was Lieutenant Fuller, you said?

6 MR. MULLIN: No.

7 A. No.

8 Q. Or I apologize. Investigator Frederick.

9 A. No.

10 MS. PAVESE: Menard.

11 Q. Oh, Menard. I apologize.

12 Are you aware, sir, if Investigator Menard
13 responded with you, he was in the same vehicle with you?

14 A. Yes.

15 Q. Okay. Are you aware whether Lieutenant Fuller
16 or Investigator Frederick responded to the scene?

17 A. Yes.

18 Q. Both of those individuals did?

19 A. Yes.

20 Q. Sir, let me ask you one more time. I think I
21 asked this already, but you heard the call come over the
22 dispatch, and you and Investigator Menard decided to
23 respond, nobody directed you to respond?

24 A. I heard radio transmissions.

25 Q. Okay.

1 A. And myself and Investigator Menard responded.

2 Q. Okay. So no superior directed you to respond,
3 would that be fair to say?

4 A. Yes.

5 Q. Thank you, sir.

6 Now, at the time that you responded to the
7 scene, what information did you have about JLA?

8 A. I had information that he had fled the scene
9 of a car accident and had what appeared to be a gun on
10 him.

11 Q. Did you receive any information, sir, that
12 that might be an airsoft gun?

13 A. No.

14 Q. So would it be fair to say that the entirety
15 of the time you were on the scene, no individual called
16 you and told you that this was potentially an airsoft
17 gun, no supervisor, no other officer?

18 A. No supervisor or officer told me that it was
19 potentially an air gun, no.

20 Q. Did it matter to you?

21 MR. MULLIN: At what point are you
22 referring to?

23 MR. ZUKHER: I obviously mean with regard
24 to the shooting.

25 Q. Would it have mattered to you if you knew that

1 this child potentially had a BB gun?

2 MR. MULLIN: Object to the form.

3 Q. Or an airsoft gun?

4 A. It would depend.

5 Q. Thank you, sir. Depend on -- just leave it at
6 that.

7 So you and Investigator Menard responded to
8 the scene?

9 A. Yes. We responded to Apulia and Coye.

10 Q. Okay. And do you recall what time you arrived
11 at Apulia and Coye?

12 A. I don't recall, no.

13 Q. Okay. Sir, do you recall the approximate time
14 that elapsed between the time that you arrived on the
15 scene and you discharged your weapon at JLA?

16 A. I don't recall.

17 Q. Could it have been longer than a half an hour?

18 A. I don't want to speculate.

19 Q. Okay. Could it have been longer than an hour?

20 A. Again, it would be speculation.

21 Q. Okay. Now, when you respond to the location
22 you described as Apulia and Coye, what other officers
23 were on the scene?

24 A. There were a number of officers there at
25 Apulia and Coye. I didn't identify every officer there

1 or have a roll call.

2 Q. I'm not asking for that, sir. I'm only asking
3 if you recall in particular how many officers were there
4 and if you knew who they were?

5 A. I can't recall. I know that there were a few.

6 Q. Did you recognize that a few of them were from
7 different agencies?

8 A. Yes.

9 Q. Thank you, sir.

10 Sir, did you have an understanding, do you
11 know what a lead agency is?

12 A. Yes.

13 Q. What's a lead agency?

14 A. An agency that takes responsibility for a
15 dispatch call or the report of a call.

16 Q. Okay. Now, who was the lead agency here?

17 MR. MULLIN: Objection.

18 A. I wasn't aware at the time.

19 Q. So, sir, when you say you weren't aware, were
20 you not aware whether you even knew the lead agency?

21 MR. MULLIN: Object to the form.

22 A. Correct.

23 Q. Prior to the shooting, did anybody advise you
24 who was in charge, who was the lead agency prior to the
25 shooting occurring?

1 A. No.

2 Q. Would it be fair to say you did not know which
3 officer was in charge of that scene at the time you
4 discharged your weapon?

5 MR. MULLIN: Object to the form.

6 Q. Or prior?

7 MR. MULLIN: Object to the form of that
8 question.

9 Q. You can answer.

10 A. I'm sorry. Can you restate the question?

11 Q. Sir, would it be fair to say that you did not
12 know who the lead officer in charge was prior to
13 discharging your weapon at JLA on March 4th, 2021?

14 MR. MULLIN: Object to the form.

15 A. Yes, that would be fair.

16 Q. Thank you, sir.

17 Now, when you arrived at the scene, did you
18 report or check in with any other law enforcement officer
19 who is superior to you?

20 A. I don't recall.

21 Q. Okay. Did Lieutenant Fuller provide you with
22 any direction after you arrived on the scene?

23 A. I don't recall.

24 Q. Okay. When you arrived on the scene or
25 anytime thereafter, was there ever established a command

1 post that you were aware of?

2 A. No.

3 Q. Did you, yourself, inquire of any other police
4 officer or any other superior as to whether a command
5 post was set up?

6 A. No, I did not.

7 Q. Did Lieutenant Fuller ask any of those
8 questions with regard to a command post or a staging
9 area?

10 A. I don't know.

11 Q. You didn't observe that yourself?

12 A. Did I observe Lieutenant Fuller requesting
13 information --

14 Q. Yes.

15 A. -- about a command post?

16 Q. Yes.

17 A. No, I didn't.

18 Q. Okay. How about with regard to a staging
19 area?

20 A. Again, I didn't observe anything.

21 Q. Okay. How about yourself, did you ask about a
22 staging area?

23 A. No.

24 Q. So did the New York State Police ever provide
25 you with the direction as to -- who did you believe to be

1 the lead agency on the scene?

2 MR. MULLIN: Objection.

3 Q. Do you recall?

4 MR. MULLIN: Object to the form of those
5 two questions.

6 Q. I believe you didn't know. You said you
7 didn't know?

8 MR. MULLIN: Object to the form of the
9 third question.

10 MR. ZUKHER: Strike both of those
11 questions, ma'am, from the record.

12 BY MR. ZUKHER:

13 Q. While you were on the scene on March 4th,
14 2021, from the time of your arrival to the time you
15 discharged your weapon, did you receive any direction or
16 commands from any lead agency or any lead police officer
17 on the scene?

18 MR. MULLIN: Object to the form.

19 A. I don't know.

20 Q. Sir, you don't recall whether you received
21 any?

22 MR. MULLIN: Object to the form.

23 Q. I didn't hear you.

24 A. I said I don't know.

25 Q. As you sit here today, do you recall any such

1 directives?

2 MR. MULLIN: Object to the form.

3 A. I don't recall any directives, no.

4 Q. Thank you, sir.

5 Were you ever advised that a perimeter was
6 ever established here by anyone?

7 A. Was I advised --

8 Q. By anyone if there was a perimeter?

9 A. I was not advised. I was aware that there
10 hadn't been a perimeter established.

11 Q. Okay. You were aware of that. Did you ask
12 anybody, are we going to establish a perimeter for this
13 thing?

14 A. Did I ask anybody if we were going to
15 establish a perimeter?

16 Q. Yes.

17 A. No.

18 Q. Did you question why a perimeter had not been
19 established?

20 A. No.

21 Q. Thank you, sir.

22 Sir, from the time that you arrived to the
23 scene to the time you discharged your weapon at JLA, what
24 information were you provided by anyone?

25 MR. MULLIN: I'm sorry. I could not hear

1 the remaining part of that question.

2 Q. What information were you provided by anyone
3 with regard to JLA?

4 A. Information that I was provided was JLA was
5 fleeing on foot. He was last seen with a gun, that there
6 was information from individuals at residences that he
7 was in backyards of people's residences with a gun, and
8 that he was traveling in a southerly -- south -- southern
9 direction.

10 Q. Okay. Is that the totality of what you were
11 told?

12 A. No, that's not the totality of what was told.

13 Q. Okay.

14 A. I obviously can't remember everything that
15 was --

16 Q. Okay. In sum and substance, that's what you
17 remember, correct?

18 A. Yes.

19 Q. Sir, that information, did you obtain that
20 from dispatch? Who provided you with this information?

21 A. The information I obtained was from a number
22 of sources. It was from dispatch. It was from other
23 responding units.

24 Q. Okay. Were you, yourself, sir, during the
25 time on the scene, were you provided with any updated

1 information?

2 MR. MULLIN: Object to the form.

3 Q. From what you received when you first arrived?

4 A. I'm not sure what you mean by updated.

5 Q. Did you get any additional -- from the time
6 that you arrived on the scene, you had in your mind
7 certain information, correct, that you were provided?

8 A. There was a constant flow of information.
9 There was radio dispatch. There was information where
10 people were indicating direction of travel where --

11 Q. Okay.

12 A. -- JLA was last seen.

13 Q. How about anything personal about JLA and his
14 mental health condition, were you provided with any of
15 that information?

16 A. Not that I recall.

17 Q. Thank you, sir.

18 I'm going to ask this so I don't forget. Did
19 you ever reach -- did you ever speak with or are you
20 aware that anybody spoke on the scene with St. Joseph's
21 Mobile Crisis Unit?

22 A. Did I speak with St. Joseph's Mobile Crisis
23 Unit, no.

24 Q. Okay. Are you aware that anybody on the scene
25 did?

1 A. I'm aware now, yes.

2 Q. Okay. Who do you believe that the Mobile
3 Crisis Unit spoke to?

4 A. I'm not sure.

5 Q. Not sure. Okay. You don't have a name for
6 me?

7 A. No.

8 Q. Okay. Don't have any documents showing that
9 they were on the scene or anything like that?

10 A. No, I don't have any documents.

11 Q. Okay. Okay. So my question, sir -- strike
12 that.

13 Sir, what directions were you given by any
14 superior officer or any lead officer with regard to what
15 you were supposed to do at that scene?

16 MR. MULLIN: Object to the form to those
17 questions.

18 Q. You can answer.

19 A. I'm not sure.

20 Q. As you sit here today, do you recall any
21 specific command given to you by any superior officer on
22 March 4th, 2021 as it pertained to the incident with JLA?

23 A. Again, I'm not sure.

24 Q. Very good. Who would those directions have
25 been given by, sir, if they were given?

1 MR. BANAS: Objection.

2 Q. Strike the question.

3 Sir, were you ever advised that this call
4 involved a mental health situation, anybody formally
5 advise, any superior advise you of that?

6 MR. MULLIN: Object to those questions.

7 Q. Go ahead, sir. You can answer.

8 A. Was I formally advised that there was --

9 Q. Yeah.

10 A. No.

11 Q. Thank you, sir.

12 No superior or other officer formally advised
13 you that JLA was experiencing a mental health crisis?

14 MR. MULLIN: Object to the form.

15 A. Nobody specifically addressed that with me.

16 Q. Thank you, sir.

17 You said that -- do you recall, sir, hearing
18 from dispatch that JLA's mother reported that he had a BB
19 gun, do you recall that --

20 MR. MULLIN: Object to the form.

21 Q. -- information or were you ever advised of
22 that information?

23 MR. MULLIN: Object to the form of that
24 question.

25 A. I'm sorry. Can you re-ask?

1 Q. Let me rephrase it.

2 Did anybody tell you during this incident that
3 JLA's mother, Carissa Albahm, reported to Trooper Fike
4 that her son had a BB gun?

5 MR. MULLIN: Object to the form.

6 Q. Anybody ever tell you that?

7 MR. MULLIN: Object to the form.

8 A. Prior to my response?

9 Q. Correct, or during your response.

10 A. As far as telling Trooper Fike that he had a
11 pellet gun --

12 Q. Yes.

13 A. -- or a BB gun?

14 Q. Yes.

15 A. No, nobody ever told me that she told him that
16 definitively he had a BB gun.

17 Q. I'm not asking about definitively. It was
18 potentially.

19 MR. MULLIN: Please don't argue with the
20 witness' answer.

21 MR. ZUKHER: I'm not arguing with the
22 witness.

23 Q. I'm not asking you potentially. I'm asking
24 prior to you discharging that weapon, did you know that
25 information?

1 MR. MULLIN: Object to the form. What
2 information?

3 MR. ZUKHER: The information that
4 Mrs. Albahm told Trooper Fike that JLA had a
5 BB gun.

6 MR. MULLIN: Object to the form.

7 A. I'm not aware of her telling Trooper Fike that
8 he had a BB gun.

9 Q. Would that have made a difference to you?

10 MR. MULLIN: Object to the form.

11 Q. In your decision to discharge your weapon?

12 A. Hypothetically, if somebody told me that he
13 definitely had a BB gun, that would affect my decision,
14 yes.

15 Q. Okay. In your two prior interactions with
16 JLA, did you find him to be carrying any weapons, besides
17 the phone, of course?

18 A. No.

19 Q. Thank you.

20 When were you first advised on March 4th of
21 April 2021 (sic) that JLA was carrying a weapon, who
22 advised you of that?

23 MR. BANAS: I'm sorry. When or who?

24 MR. MULLIN: Object to the form.

25 Q. It's two separate questions. I'll break it

1 up.

2 Sir, when were you first advised on March 4th,
3 2021 that JLA was carrying a weapon?

4 A. I don't recall when I was first advised.

5 Q. Okay. Do you recall who advised you of that?

6 A. I do not.

7 Q. Thank you, sir.

8 When you were advised that JLA had a weapon,
9 did that individual, whoever that was, did they describe
10 the weapon?

11 A. I don't recall if there was a description
12 given.

13 Q. Thank you, sir.

14 When were you advised that JLA had a weapon,
15 in the beginning of this incident, towards the end,
16 towards the middle, when were you so advised?

17 A. I don't recall exactly when I was advised.

18 Q. Thank you, sir.

19 At the time that you were pursuing JLA, did
20 you believe that he committed any crime?

21 MR. MULLIN: Object to the form.

22 A. Yes.

23 Q. Okay. What crime was that, sir?

24 A. Well, there were a number. At least one of
25 leaving the scene of an accident.

1 Q. Okay.

2 A. Another would be criminal possession of a
3 weapon.

4 Q. Potentially, right?

5 MR. MULLIN: Object to the form.

6 Q. Potentially, right, because you didn't know?

7 MR. MULLIN: Object to the form. Don't
8 argue with the witness.

9 MR. ZUKHER: I'm not arguing.

10 MR. MULLIN: Well, let him answer, then.

11 MR. ZUKHER: Okay.

12 A. Did I believe that he was committing a crime?
13 Yes. If I'm receiving information that he has a gun or
14 that he has a -- that he has left the scene of an
15 accident, yes, I believe he did.

16 Q. On that date, would it be fair to say you
17 pursued JLA?

18 A. Yes.

19 Q. Okay. Anybody give you any directions with
20 regard to that pursuit or how that pursuit was supposed
21 to go?

22 MR. MULLIN: Object to the form.

23 A. No, nobody gave me direction.

24 Q. Okay. Sir, were you advised to use a specific
25 channel for communications?

1 A. Not that I recall.

2 Q. Were you aware, sir, that the responders on
3 the scene were all using different channels, were you
4 aware of that?

5 A. I was aware of at least three different
6 channels being utilized, yes.

7 Q. Okay. And you can't monitor three channels at
8 the same time, can you?

9 A. Yes, you can.

10 Q. In pursuit, is that what you were doing?

11 A. Myself and Investigator Menard were monitoring
12 multiple channels, yes.

13 Q. Multiple channels. I understand. Anybody
14 ever direct you to use a specific channel or frequency
15 during any portion of this incident?

16 A. I don't recall specifically.

17 Q. But, in fact, as you sit here today, you do
18 recall that three channels were being used throughout the
19 incident, correct?

20 A. Yes.

21 Q. Let me ask you this: Did you, yourself, ever
22 switch channels to one channel that contained all of the
23 agencies that were responding, was there one channel that
24 you were aware of that --

25 MR. MULLIN: Object to the multiple

1 questions.

2 Q. Strike all of those.

3 Were you aware or do you -- were you directed
4 to use a single channel?

5 MR. MULLIN: Object to the multiple
6 questions.

7 A. Can you rephrase that?

8 Q. Of course.

9 When you respond to the scene, the Dewitt
10 Police uses one channel, right?

11 MR. MULLIN: Object to the form.

12 Q. Or is it certain channels? That may be
13 different than the channels used by the New York State
14 Police, it may be different than the channels used by the
15 Onondaga County Sheriff's, correct?

16 MR. MULLIN: Object to the form.

17 Q. You can answer my question, sir.

18 MR. ZUKHER: It's not objectionable.

19 A. It's correct they may be different channels,
20 yes.

21 Q. Thank you, sir.

22 During the incident on March 4th, 2021, was
23 there ever a time where everybody was on the same
24 channel?

25 A. It would depend.

1 Q. I understand. Were you, yourself, ever
2 advised by any superior and directed to a particular
3 channel over which you must communicate?

4 A. I don't recall.

5 Q. Thank you, sir.

6 Sir, was it ever communicated to you when you
7 responded to the scene, did you have any
8 less-than-lethals with you?

9 A. When I respond, yes.

10 Q. But you did not take those with you when you
11 pursued JLA?

12 MR. MULLIN: Object to the form.

13 A. I did.

14 Q. Okay. But you decided to discharge your
15 service weapon instead; is that correct?

16 A. I wouldn't say -- yes.

17 Q. Okay. What less-than-lethals did you have
18 with you at the time you discharged your service firearm
19 at JLA?

20 A. I had a Taser with me.

21 Q. Okay.

22 A. And a baton.

23 Q. Okay. And neither one of those were used or
24 deployed?

25 A. No.

1 Q. Did anybody tell you or suggest to you to use
2 or deploy those, any superior?

3 MR. MULLIN: I'm sorry. I couldn't hear
4 the last word you said.

5 Q. Did any superior tell you to use or deploy the
6 less-than-lethals?

7 A. No.

8 Q. Thank you.

9 Were you aware that other officers on the
10 scene had less-than-lethals?

11 MR. MULLIN: Object to the form.

12 A. Yes.

13 Q. Thank you.

14 Did you see any of those officers use their
15 less-than-lethal weapons?

16 A. No.

17 Q. Sir, are you aware that there was no command
18 post set up in this incident, are you aware of that now?

19 A. Yes.

20 Q. Are you aware that the lead agency here was
21 the State Police, they were the first responders, are you
22 aware of that?

23 MR. MULLIN: Object to the form.

24 Q. Or were you aware of that?

25 A. No.

1 Q. Are you aware of that now?

2 A. I don't know who was --

3 Q. Let me ask you, sir: Assuming that Trooper
4 Fike was the first responding trooper and he's a
5 New York State trooper, would he then ergo be the lead
6 agency on the scene?

7 MR. MULLIN: Object to the form.

8 MR. BANAS: Objection.

9 Q. Which would be the New York State Police?

10 MR. MULLIN: Object to the form.

11 A. It depends.

12 Q. Very good.

13 Did you know who the lead agency was at the
14 scene at the time you discharged your weapon at JLA?

15 MR. MULLIN: Object to the form.

16 A. No.

17 Q. Did you know who was in charge at the time you
18 discharged your weapon at JLA?

19 MR. MULLIN: Object to the form.

20 A. Did I know who was in charge?

21 Q. Right. Who was in charge of the scene?

22 MR. MULLIN: Object to the form.

23 A. I guess I don't understand that.

24 Q. Were you aware that there was any individual
25 that took charge of the scene and issued directives to

1 the police officers and investigators and others who were
2 in pursuit?

3 A. I'm sorry. Can you say that --

4 MR. ZUKHER: Ma'am, can you read that
5 back?

6 (Requested portion read back.)

7 A. No.

8 Q. Thank you, sir.

9 MR. ZUKHER: We're going to take a
10 five-minute break.

11 (Off record: 11:00 a.m. to 11:11 a.m.)

12 BY MR. ZUKHER:

13 Q. Sir, I'm going to take you back a little bit.
14 Would it be fair to say that from the time the original
15 call came in until the time that you discharged your
16 weapon at JLA, about an hour had elapsed, would that be
17 fair to say?

18 MR. MULLIN: Object to the form.

19 A. I'm not sure.

20 Q. Okay. Do you have any reason to dispute that
21 an hour elapsed or more?

22 MR. MULLIN: Object to the form. From
23 when to when?

24 Q. Do you have any reason to dispute that more
25 than an hour elapsed from the time that the first call

1 came in and you discharged your service weapon at JLA?

2 A. I don't know when the call first came in, so I
3 wouldn't --

4 Q. Right. I'm asking if you have any reason to
5 dispute what I'm saying?

6 A. No.

7 MR. MULLIN: He's answered he doesn't
8 know.

9 MR. ZUKHER: I understand. Now he just
10 answered. Thank you.

11 Q. Sir, within that hour of time that elapsed
12 between when the first call came in and when JLA was
13 shot, what did you do to try and determine whether the
14 child had a BB gun?

15 MR. MULLIN: Object to --

16 Q. Did you do anything?

17 MR. MULLIN: Object to the form of those
18 questions.

19 Q. You can answer.

20 A. I'm sorry. Can you ask it again?

21 Q. Did you, yourself, within the hour between the
22 call coming in and JLA had fled his residence and struck
23 the car in the driveway and the time that you discharged
24 your service weapon at JLA, did you, yourself, do
25 anything to determine whether the child was carrying a BB

1 gun as opposed to a real gun?

2 MR. MULLIN: Object to the form.

3 A. I'm sorry. One more time, please?

4 Q. Strike that.

5 At some point you and Investigator Menard
6 enter the woods, correct --

7 A. Yes.

8 Q. -- to pursue JLA?

9 And did anybody direct you to do that, sir, or
10 did you make that decision on your own?

11 A. I made --

12 Q. To enter the woods to pursue JLA.

13 A. I made that decision on my own.

14 Q. Thank you, sir.

15 Was Lieutenant Fuller with you?

16 A. No.

17 Q. Did Lieutenant Fuller also go into the woods?

18 A. I don't know.

19 Q. Did you communicate with Lieutenant Fuller
20 after you went into the woods?

21 A. I communicated with -- over the radio with all
22 the other units that were responding.

23 Q. Okay. When did you make those communications,
24 sir?

25 A. When I observed JLA going -- JLA in the woods.

1 Q. And what was the sum and substance of the
2 conversations that you had?

3 A. I relayed his location and his direction of
4 travel.

5 Q. Okay. And what was relayed back to you?

6 A. I don't recall.

7 Q. Thank you, sir.

8 Now, prior to entering the woods, did you see
9 JLA?

10 A. Yes.

11 Q. Prior to entering the woods, did you speak
12 with JLA?

13 A. No.

14 Q. Are you aware, sir, that there were other
15 people in the Dewitt Police Department who had spoken to
16 JLA before, are you aware of that?

17 A. No.

18 Q. Did anybody from the Dewitt Police who had
19 prior communications with JLA communicate anything to you
20 about him that day?

21 A. I'm sorry. Can you repeat that?

22 MR. ZUKHER: Ma'am, I don't think I can.

23 Could you?

24 (Requested portion read back.)

25 Q. Prior to the shooting.

1 A. I'm not sure.

2 Q. Did anybody from the Onondaga County Sheriff's
3 Department communicate with you that day prior to the
4 shooting?

5 MR. SICKINGER: Object to the form.

6 Q. Did any member of the Onondaga County
7 Sheriff's Department or anybody connected with that
8 agency have any conversations with you or give you any
9 direction or information on March 4th, 2021?

10 MR. SICKINGER: Same objection.

11 MR. MULLIN: Same objection.

12 Q. Go ahead. You can answer.

13 A. I was receiving all kinds of information
14 through dispatch and through radio transmissions.

15 Q. Do you know where that information originated
16 from?

17 A. Various different sources.

18 Q. Did you, yourself, communicate with anybody
19 from the Onondaga County Sheriff's Department that day?

20 MR. SICKINGER: Object to the form.

21 A. Again, radio transmissions.

22 Q. I'm sorry, sir?

23 A. I said, again, it would be radio
24 transmissions, that everybody who was monitoring radio
25 traffic would have heard my transmission, so I

1 can't --

2 Q. Did you actually have any conversation or any
3 discussion with anyone from the Onondaga County Sheriff's
4 Department?

5 MR. SICKINGER: Object to the form.

6 Q. Either a police officer or otherwise?

7 MR. SICKINGER: Same objection.

8 Q. That day?

9 A. I'm sorry. Can you repeat the question?

10 Q. Do you recall speaking with anyone from the
11 Onondaga County Sheriff's Department, whether that be a
12 deputy or anyone else, on March 4th, 2021 about JLA?

13 MR. SICKINGER: Object to the form.

14 MR. ZUKHER: How is that objectionable?

15 MS. PAVESE: Dave.

16 Q. Go ahead, sir. You can answer.

17 A. I don't recall.

18 Q. How about anybody from the New York State
19 Police, any officer of the New York State Police or any
20 other agent or person involved with the New York State
21 Police, do you recall having any conversation with them
22 on March 4th, 2021?

23 MR. BANAS: You mean a one-on-one
24 conversation?

25 MR. ZUKHER: Right.

1 MR. BANAS: Thank you.

2 MR. ZUKHER: A conversation.

3 A. Again, I don't recall.

4 Q. Thank you, sir.

5 And you don't recall whether you had the
6 communication, so you certainly wouldn't remember the sum
7 and substance of anything that was said?

8 MR. MULLIN: Object to the form of those
9 questions.

10 Q. Strike that.

11 Am I -- I'm just trying to get this straight.
12 You didn't talk with anyone, all you did was listen to
13 radio transmissions, would that be fair to say?

14 MR. MULLIN: Object to the form.

15 A. Again, I don't know exactly what you're
16 asking.

17 Q. What I'm asking, sir, is: After you arrived
18 on the scene on March 4th, 2021, did you speak with
19 anybody from the New York State Police about JLA prior to
20 discharging your service weapon at him?

21 A. I don't recall.

22 Q. Same question for the Onondaga County
23 Sheriff's Department?

24 A. I don't recall.

25 Q. Okay. Now, at what point did you first see

1 JLA on March 4, 2021, did you first take visual
2 observation of him?

3 A. When I radioed in that I observed him in the
4 woods.

5 Q. Okay. How quickly thereafter did you
6 discharge your service weapon?

7 MR. MULLIN: Object to the form.

8 A. I couldn't tell you.

9 Q. Twenty minutes, thirty minutes, closer to
10 twenty or closer to thirty?

11 A. I don't know. I don't want to speculate.

12 Q. I understand. Did you, yourself, have any
13 conversations with JLA, did you attempt to speak with him
14 or communicate with him in any way?

15 MR. MULLIN: Object to the form.

16 A. Yes.

17 Q. Prior to the shooting?

18 A. Yes.

19 Q. Okay. What did you do, sir?

20 A. I called out to him. I told him to drop the
21 gun.

22 Q. And at that point had you received any
23 information that it could potentially be a BB gun at that
24 point, had you received that information?

25 MR. MULLIN: Object to those questions.

1 Q. You can answer both of those questions.

2 A. No, I didn't.

3 Q. Thank you, sir.

4 Now, at some point, you discharge your service
5 weapon at JLA, correct?

6 A. Yes.

7 Q. Can you describe to me, please, how that
8 occurred?

9 A. I told JLA to drop the gun several times, told
10 him not to raise the gun. He raised the gun. I
11 perceived an imminent threat and fired my weapon.

12 Q. How many times did you fire your weapon at
13 JLA, sir?

14 A. I discharged my firearm until I expended the
15 magazine, so that would be eleven rounds.

16 Q. Okay. Did you reload and fire again or were
17 only eleven rounds discharged by you?

18 A. Only eleven rounds were discharged by me.

19 Q. Do you know whether any of those rounds struck
20 JLA?

21 A. At the time of the incident, no.

22 Q. Okay. How about subsequent to the incident?

23 A. Subsequent to the incident, I was made aware
24 of some rounds impacting him.

25 Q. Okay. Did you, yourself, observe any of your

1 rounds impact him?

2 A. No.

3 Q. Were you the first to fire, sir?

4 MR. MULLIN: Object to the form.

5 Q. Were you the first officer to discharge your
6 weapon on March 4th, 2021?

7 MR. MULLIN: Object to the form.

8 A. I don't know.

9 Q. Sir, at the time you discharged your service
10 weapon at JLA, can you describe the surrounding area for
11 me? How densely or sparsely populated was it? Where was
12 the nearest civilian?

13 A. I'm sorry. There were a couple questions
14 there. What --

15 Q. Sure. I'm asking about the area where JLA was
16 shot was in the woods, correct?

17 A. Yes.

18 Q. Where was the nearest civilian or threat to
19 any nearest civilian from JLA at the time he was shot?

20 A. I don't know.

21 Q. Where was the nearest house to the area where
22 you discharged your service weapon?

23 A. I don't know.

24 Q. Were there people in the way of you
25 discharging your service weapon?

1 A. Not that I recall, no.

2 Q. Okay. Do you believe you put anybody in
3 harm's way besides JLA when you discharged your service
4 weapon eleven times in the area where JLA was shot?

5 MR. MULLIN: Object to the form of the
6 questions.

7 A. I'm sorry. Can you repeat the question?

8 MR. ZUKHER: Madam Court Reporter?

9 (Requested portion read back.)

10 A. I don't believe so.

11 Q. Would it be fair to say that there were no
12 civilians in the line of fire where JLA was, would that
13 be fair to say?

14 A. There were no civilians between me and JLA,
15 yes.

16 Q. How about in the surrounding area?

17 A. I don't --

18 Q. Your shots travel, right, gunshots travel
19 quite a distance, right? You discharged eleven of them,
20 right?

21 A. Yes.

22 Q. Okay. Did you believe you were putting
23 anybody else in danger by discharging eleven rounds in
24 the area where JLA was shot?

25 A. No.

1 Q. That's because there weren't anybody around in
2 that area, would that be fair to say?

3 A. No.

4 Q. Okay. Where was the nearest civilian to where
5 JLA was shot?

6 A. I don't know.

7 Q. Did that factor into your decision to shoot?

8 A. I'm sorry?

9 Q. That there were no civilians around, you were
10 in the woods, did that factor into your decision to
11 shoot?

12 A. That there were no civilians in the woods?

13 Q. Correct.

14 A. No.

15 Q. Were there any homes or residences in the line
16 of fire where JLA was shot?

17 A. I don't know.

18 Q. Thank you, sir.

19 Now, there were two separate rounds of volleys
20 fired, correct? Did you know that?

21 A. Yes.

22 Q. Okay. The eleven shots that you discharged,
23 were those in the first -- was that the first round of
24 volley?

25 A. I believe so.

1 Q. Okay. Would it be fair to say that you did
2 not discharge your service weapon during the second round
3 of volley that occurred?

4 MR. MULLIN: Object to the form.

5 A. I did not expend any rounds after I expended
6 my magazine.

7 Q. Okay. As you sit here today, would it be fair
8 to say that there was two rounds of volleys fired?

9 A. I recall two rounds of volleys.

10 Q. Thank you, sir.

11 Do you recall discharging your service weapon
12 at all during the second round of volley?

13 A. Again, I don't know.

14 Q. Thank you, sir.

15 After the second round of volley, did you
16 attempt to provide any aid to JLA?

17 A. No.

18 Q. After the shooting, did you speak with any
19 other officers on the scene?

20 A. I did. I don't recall the substance of it.

21 Q. Subsequently did you debrief or give any
22 statement about this incident to anyone?

23 MR. MULLIN: Object to the form of the
24 questions.

25 A. I provided a report regarding my -- or the

1 incident and my involvement.

2 Q. Thank you.

3 Who was that report provided to, sir?

4 A. To the Town of Dewitt Police Department.

5 Q. Okay. Were you ever asked to debrief or give
6 a statement by the District Attorney's Office of Onondaga
7 County with regard to this incident?

8 A. What's your -- I guess what's your definition
9 of debrief?

10 Q. Let me ask it plainly. Did Bill Fitzpatrick
11 ask you to give an interview in this incident?

12 A. No. I didn't give an interview.

13 Q. Did Bill Fitzpatrick ask you to?

14 A. No.

15 Q. And did you ever give a statement to the
16 District Attorney's Office about what happened here?

17 A. Again, it would depend on statements.

18 Q. Let me ask you this, sir: Did you ever refuse
19 a request from the District Attorney's Office to give a
20 debrief about the incident of what occurred on
21 March 4th, 2021 with regard to JLA?

22 A. I don't recall.

23 Q. Do you recall speaking to the District
24 Attorney's Office about this incident?

25 A. No.

1 Q. I want to make sure I get this crystal clear.
2 As you sit here today, you do not recall whether Bill
3 Fitzpatrick ever asked you to give a debrief about what
4 happened in this incident, is that your testimony?

5 A. With your definition as far as did he
6 interview me, no, he did not.

7 Q. I am asking if he made a request for an
8 interview, not whether he interviewed you. I know he
9 didn't interview you. I'm asking whether that request
10 was made to you of you by the District Attorney's Office
11 or of the Dewitt Police, that you're aware of, by the
12 District Attorney's Office?

13 MR. MULLIN: There's multiple questions
14 there.

15 MR. ZUKHER: He knows what I'm asking.

16 MR. MULLIN: I know, but I'm just
17 following the rules.

18 MR. ZUKHER: Right. I understand.

19 MR. MULLIN: Break it down. He's
20 answered Bill Fitzpatrick didn't, so I don't
21 know what else you want to know.

22 MR. ZUKHER: I'm going to ask it again
23 just to make sure.

24 MR. MULLIN: Your pleasure.

25 MR. ZUKHER: Yes, it is.

1 BY MR. ZUKHER:

2 Q. So I'm going to ask you again, sir, just to
3 make sure. Do you recall whether or not Bill Fitzpatrick
4 ever asked you to do a debrief with regard to the
5 shooting that occurred in this case?

6 A. Again, I would have to ask your definition of
7 a debrief was saying that --

8 Q. What occurred.

9 A. -- an interview.

10 Q. Right.

11 A. I did not have an interview with Bill
12 Fitzpatrick.

13 Q. I'm asking whether you were ever asked for
14 one?

15 A. I don't recall being asked to sit down with
16 Bill --

17 Q. Did you ever discuss whether or not you'd give
18 testimony to Bill Fitzpatrick with anyone?

19 MR. MULLIN: Well, object to that. That
20 violates --

21 Q. Obviously, besides your attorneys who told you
22 not to do it.

23 MR. MULLIN: Object to that
24 characterization.

25 Q. Did you ever discuss with anyone except for

1 Counsel -- obviously I'm not interested in any Counsel
2 questions. Did you ever discuss with anyone except for
3 Counsel about whether or not to give an interview to Bill
4 Fitzpatrick about what occurred in this case?

5 A. I don't recall.

6 Q. Thank you, sir.

7 Where did you go when you left the scene?

8 A. We went to, I believe, St. Joe's
9 or -- St. Joe's or -- what hospital is that? I don't
10 recall. I don't recall which hospital.

11 Q. For what purpose did you go to the hospital,
12 sir?

13 A. Medical evaluation.

14 Q. For you discharging your service weapon? Were
15 you hurt in this incident?

16 MR. MULLIN: Object to the questions.

17 Q. Strike both of those.

18 Were you hurt in this incident?

19 A. I mean --

20 MR. MULLIN: I'll note an objection.

21 We're not placing his physical condition at
22 issue in this case.

23 MR. ZUKHER: He testified -- first of
24 all, that is not a valid objection in this
25 deposition.

1 MR. MULLIN: Well, it's a frivolous
2 question, because it's not an issue.

3 MR. ZUKHER: It is absolutely not. He
4 testified that after the incident, he went to
5 the hospital. I have every right to know
6 whether he was injured or claims that he was
7 injured during this incident. How is that in
8 any way an improper question?

9 MR. MULLIN: That's different than what
10 you're asking.

11 MR. ZUKHER: That's what I'm asking.

12 BY MR. ZUKHER:

13 Q. Were you injured in this incident?

14 MR. ZUKHER: I believe the transcript
15 will have three of those questions.

16 Q. Were you injured in this incident?

17 MR. MULLIN: Now it's four.

18 Q. For the fifth time.

19 MR. MULLIN: Now it's six.

20 MR. ZUKHER: For the fifth time, correct,
21 thanks to you.

22 A. Technically, yes.

23 Q. Okay. What do you mean by technically, yes?
24 How were you injured?

25 MR. MULLIN: I'll note an objection to

1 this line of questioning.

2 MR. ZUKHER: Very good.

3 MR. MULLIN: I'll let him answer a little
4 bit, then we'll stop it.

5 MR. ZUKHER: Ridiculous.

6 MR. MULLIN: Excuse me, Counselor? No
7 swearing in the room.

8 MR. ZUKHER: I said ridiculous.

9 MR. MULLIN: Go ahead.

10 MR. ZUKHER: I don't believe ridiculous
11 is a swear word.

12 BY MR. ZUKHER:

13 Q. I'm not trying to trick you in any way.

14 MR. MULLIN: Let him answer the question
15 without your speech.

16 MR. ZUKHER: I can make all the speeches
17 I want. That's not a valid objection during
18 this deposition. If you don't stop, I'm going
19 to call the judge and we can continue the
20 deposition in front of the judge. We can stop
21 all of your complete nonsensical objections.

22 MR. MULLIN: Thank you for the speech.

23 MR. ZUKHER: You're welcome.

24 MR. MULLIN: Can I have the
25 question -- could you read back the question

1 that was pending before the speech?

2 MR. ZUKHER: For the seventh time.

3 (Requested portion read back.)

4 THE WITNESS: I had a scratch on my hand.

5 BY MR. ZUKHER:

6 Q. Okay. Where on your hand, sir?

7 A. On the back of my hand.

8 Q. Okay. Can you describe the scratch for me?

9 A. It was a small scratch probably from going
10 through brush or whatnot.

11 Q. Okay. How many inches was this scratch,
12 approximately?

13 A. I couldn't tell you.

14 Q. Okay. What medical treatment did you receive
15 at the hospital for this scratch?

16 MR. MULLIN: Note an objection.

17 A. A tetanus shot.

18 Q. Did you scratch yourself on something metal?

19 A. No, not that I know of.

20 Q. Okay. Sir, following the shooting, did you
21 have any mental health evaluations or did you see any
22 therapists or psychiatrist with regard to what occurred?

23 MR. MULLIN: I'm not going to allow that
24 question.

25 MR. ZUKHER: Very good.

1 Q. Sir, did you give any statements or interviews
2 following the shooting about the shooting itself?

3 A. Other than my report, no.

4 Q. Okay. So the only statement about your
5 shooting is contained within your report of what
6 occurred, correct? Do you recall that to be a one-page
7 document, sir?

8 A. Yes.

9 Q. Thank you.
10 Were you relieved from duty in any way
11 following the incident?

12 MR. BANAS: I'm sorry? I didn't hear the
13 beginning of the question.

14 Q. Were you relieved from duty in any way
15 following this incident as a result of this incident?

16 MR. MULLIN: Note an objection to this
17 line. Go ahead.

18 A. Yes.

19 Q. Okay. Can you tell me about that period of
20 time, how long were you relieved from duties, and who
21 made that decision?

22 A. I don't recall how long it was.

23 Q. Two months, three months?

24 A. I don't recall.

25 Q. Was it longer than three months?

1 MR. MULLIN: Object to the form.

2 A. I'd have to speculate, and I don't want to
3 speculate.

4 Q. Who made the decision to remove you from duty?

5 A. I would say at the end of the day, it would
6 have been the chief of police.

7 Q. Okay. Were you provided with any written
8 documentation pertaining to that removal or your removal
9 from duties temporarily?

10 A. I don't recall.

11 MR. ZUKHER: I would make a request,
12 specific request, for any and all information
13 pertaining to the removal of this officer from
14 duty as a result of this incident, all
15 documents.

16 Q. When do you recall returning to duty?

17 A. I don't know the time frame. I subsequently
18 returned to duty.

19 Q. Was it a year later that you returned to duty
20 or --

21 A. No.

22 Q. -- was it before that?

23 A. It was before a year.

24 Q. Okay. Was it six months or was it longer than
25 six months?

1 A. I'm not sure. I can tell you it was less than
2 a year.

3 Q. Less than a year. I understand.

4 Did you notify your union rep of this -- did
5 you have a union with the Dewitt Police, are you
6 represented by a union?

7 A. Yes, we do.

8 Q. Okay. Did you notify your union rep of this
9 incident?

10 A. Did I notify him? No. He was aware of it.

11 Q. Okay. Did you, yourself, seek legal counsel
12 following this incident?

13 A. Yes. I reached -- well, it was union-provided
14 counsel.

15 Q. Thank you.

16 Sir, I'm going to turn your attention to --

17 MR. ZUKHER: Let's have this marked as
18 Exhibit 1.

19 (Exhibit 1 marked for identification.)

20 (Off record: 11:36 a.m. to 11:42 a.m.)

21 BY MR. ZUKHER:

22 Q. Sir, I'm going to show you what's been marked
23 by the Court Reporter as Exhibit 1. If you can take a
24 look at that document. Let me know if you know what that
25 is?

1 A. Yes, it looks like they're notes from a
2 walkthrough.

3 Q. And who was this document prepared by, do you
4 know?

5 A. I'm not sure.

6 Q. Okay. Who provided the information for this
7 document?

8 A. I believe myself and Investigator Menard.

9 Q. Okay. And, sir, I'm going to draw your
10 attention to the document. Do you see anywhere in this
11 document where you refer to any mental health issues from
12 JLA?

13 A. I'm sorry. What was the question, again?

14 MR. ZUKHER: Madam Court Reporter?

15 (Requested portion read back.)

16 A. There are no references to mental health
17 issues.

18 Q. Are there any references in that document,
19 sir, is there any direction or instruction that you
20 received from anyone during this incident, is that
21 contained within that document, sir?

22 A. I would say yes, radio transmissions that the
23 suspect was heading south, so that would be direction.

24 Q. Okay. Besides the radio transmission,
25 anything else? By the way, the radio transmissions,

1 they're not specifically directed to you, are they?

2 MR. MULLIN: Object to the form.

3 A. Radio transmissions are directions as far
4 as --

5 Q. I understand. They're directions for
6 everyone, right?

7 A. Yes.

8 Q. Everybody hears them. I'm asking about any
9 specific directions that were given to you by any
10 superior or supervising officer?

11 A. No, there's no indication of any directive.

12 Q. Sir, is there any information within that
13 document about the use of an incident command system?

14 A. No.

15 Q. Any information on that document about
16 establishing -- that a command post was established?

17 A. No.

18 Q. How about a staging area, same question for a
19 staging area?

20 A. No, there's nothing in there.

21 Q. Does that document, sir, contain the channels
22 you used to communicate during this incident?

23 A. No.

24 Q. Does that document, sir, indicate who your
25 superior officer was or what directions you received from

1 him in this incident?

2 A. No.

3 Q. Does that document indicate, sir, who is the
4 lead agency in this incident?

5 A. It does not.

6 Q. Thank you, sir.

7 Sir, are you familiar with those words
8 "incident command system"?

9 A. Yes.

10 Q. Okay. Can you tell me what that is?

11 A. Incident command system refers to something
12 along the lines of IDC, where you create an incident
13 command structure for a large-scale event.

14 Q. A serious incident, right?

15 MR. MULLIN: Object to the form.

16 Q. Sir, are you aware that your department has a
17 manual with regard to critical incident management?

18 A. Yes.

19 Q. Are you aware of the policies and procedures
20 stated in that manual?

21 A. Yes, I have a working knowledge.

22 Q. Okay. And, in fact, you have to have that
23 working knowledge as part of your job duties, would that
24 be fair to say?

25 A. Yes.

1 Q. Okay. Sir, what steps did you take to
2 implement an ICS or similar procedure during this
3 incident?

4 A. I'm sorry. Say that again?

5 Q. This incident, the shooting of JLA, what steps
6 did you take to implement ICS?

7 A. I worked on attempting to contain JLA.

8 Q. Okay. Sir, are you aware that your department
9 has policies with regard to ICS?

10 A. Yes.

11 Q. Okay. And that those policies are, in
12 fact -- I'm going to show you what's been marked
13 as --

14 MR. ZUKHER: Let me mark this as
15 Plaintiff's Exhibit 2.

16 (Exhibit 2 marked for identification.)

17 BY MR. ZUKHER:

18 Q. Sir, I'm going to show you what's been marked
19 as Plaintiff's Exhibit Number 2. Could you take a look
20 at that document, please?

21 A. Yes.

22 Q. Tell me if you know what that is?

23 A. That appears to be our manual order for
24 critical incident management.

25 Q. And does that appear to be a complete, good

1 reproduction of that document, sir?

2 A. It appears to be.

3 Q. Okay. Sir, let's go to the Section Number 1
4 that says Purpose. Would it be fair to say that the
5 purpose of this document is for successful resolution of
6 critical incidents, would that be fair to say?

7 MR. MULLIN: Object to the form.

8 A. It says that the purpose is to provide a
9 organizational framework for the successful resolution of
10 incidents.

11 Q. Incidents. What I said, right?

12 MR. MULLIN: Object to the form.

13 Q. Sir, I'm going to bring you to Paragraph
14 Number 2 where it says Policy. Do you see the sentence
15 that says: When needed, a Unified Commercial
16 Structure -- a Unified Command Structure will be utilized
17 for managing incidents involving multiple jurisdictions,
18 a single jurisdiction with multiple agencies sharing
19 responsibility, and multiple jurisdictions with
20 multi-agency involvement. Would it be fair to say that
21 that says that?

22 A. Yes.

23 Q. And then under Definitions, in G, it says:
24 Incident Command System - The standardized system used
25 for on-scene commanding, controlling, and coordinating

1 the efforts of the individual agencies as they work
2 toward the common goal of stabilizing an emergency in an
3 effort to protect life, property and management (sic).
4 Do you see where it says that?

5 A. Yes.

6 Q. Did you, sir, institute the ICS system in this
7 case? Did you have -- strike that.

8 After receiving the --

9 MR. MULLIN: Let me note an objection.
10 You didn't read the entire section.

11 MR. ZUKHER: Fine. You can make your
12 objection.

13 Q. Sir, did you upon arriving to the scene
14 implement ICS in any way, you, yourself?

15 A. We didn't reach the point of implementing it.

16 Q. Okay. You were on the scene for almost an
17 hour, sir, you didn't reach the point of implementing
18 ICS?

19 MR. MULLIN: Don't answer that question.

20 MR. ZUKHER: Very good. Even better.

21 Q. Sir, I'm going to take you to --

22 MR. MULLIN: Why don't you rephrase it?

23 MR. ZUKHER: I have what I need.

24 Q. I'm going to take you to Part 4, where it says
25 Procedure --

1 MR. ZUKHER: You're refusing to let him
2 answer?

3 MR. MULLIN: No. No. I'll let him
4 answer --

5 MR. ZUKHER: Even better.

6 MR. MULLIN: -- I'm asking you to
7 rephrase it because of the characterization
8 of --

9 MR. ZUKHER: It's my deposition.

10 MR. MULLIN: -- sitting here for an hour
11 is inappropriate.

12 MR. ZUKHER: Thank you for helping your
13 client.

14 BY MR. ZUKHER:

15 Q. Sir, do you see where it says Procedure?

16 A. Yes.

17 Q. It says: Incident Command System Activation,
18 do you see where it says under A?

19 A. Yes.

20 Q. It says: The Incident Command System
21 described shall be activated when. Do you see that?

22 A. Yes.

23 Q. Would it be fair to say, sir, that the word
24 "shall" is mandatory, you must implement?

25 MR. MULLIN: Object to the form of the

1 questions.

2 Q. Would that be fair to say?

3 A. I would say not necessarily.

4 Q. You dispute words, sir, that the word "shall"
5 is mandatory, as you sit here today?

6 A. It infers on the other portions of the
7 document as far as where it indicates --

8 Q. It says --

9 MR. MULLIN: Let him finish the answer,
10 please. You're interrupting him.

11 A. As far as the other portions of the document
12 indicating what the definition of this is and -- or
13 earlier on, it says "may". So being that that follows
14 "may", then I would say it wouldn't be mandatory.

15 Q. Sir, do you see the word "shall" in this
16 sentence? The Incident Command System, open paren, ICS,
17 described in this order shall be activated when. My
18 question was: Do you believe that shall is mandatory,
19 not discretionary?

20 MR. MULLIN: Let him answer the question.

21 A. Again, it depends, because it follows with the
22 policy where it says: When needed, the Unified Command
23 Structure will be utilized.

24 Q. Right. But down here where it says Procedure,
25 it says: ICS shall be activated when. I'm going to take

1 you right to B: Multiple agencies or disciplines are
2 involved in the emergency response. Would that be fair
3 to say, sir, that's what it says?

4 A. Again, like I said, the mandatory portion I
5 don't agree with, because it says earlier on --

6 Q. All I'm asking is --

7 MR. MULLIN: Let him finish. You're
8 interrupting him. Go ahead, sir.

9 A. I said again, I don't agree with the
10 assumption that it is mandatory if it says shall, because
11 earlier on in the document it indicates that it may be
12 utilized for an incident command system, so there isn't
13 any mandatory portion of it.

14 Q. Sir, my question to you was much simpler than
15 this. Do you believe that the word "shall" is mandatory
16 or discretionary?

17 A. In this context, I'm saying no.

18 Q. Very good. Do you see where it says:
19 Multiple agencies or disciplines are involved in the
20 emergency response, under Subsection B?

21 A. I'm sorry. Where are you?

22 MS. PAVESE: On Page 2.

23 Q. Page 2, almost to the bottom.

24 MS. PAVESE: Section 4.

25 Q. Section 4, Subsection 1-B.

1 A. Yeah, it says: Incident command described in
2 this order shall be activated when multiple agencies or
3 disciplines --

4 Q. Okay. And, in fact, sir, when you arrived to
5 the scene, you observed multiple agencies present,
6 wouldn't that be fair to say?

7 A. When I responded to the scene, I did observe
8 multiple agencies, yes.

9 Q. Yeah. Did you take any steps to implement ICS
10 yourself? ICSA, well, it's abbreviated as ICS.

11 A. When I responded, the primary purpose or the
12 initial response was such that we were looking to
13 establish a control of the scene, yes.

14 Q. Sir, what steps did you, yourself, take to
15 implement ICS?

16 MR. MULLIN: Object to the form.

17 A. I worked to contain the suspect --

18 Q. Okay.

19 A. -- in an established area.

20 Q. Is that what you did to establish ICS? What
21 steps did Lieutenant Fuller take to establish ICS, are
22 you aware of any?

23 MR. MULLIN: Object to the form.

24 A. I don't know what Lieutenant Fuller was doing.

25 Q. Okay. Sir, this says: If applicable,

1 activate under the duties of the first officer --

2 MR. MULLIN: Where are you reading from,
3 Counselor, please?

4 MR. ZUKHER: Page 3, right from the top,
5 Duties of the First Officer on the Scene.

6 Q. You weren't the first officer on the scene,
7 correct?

8 A. No.

9 Q. And were you a supervising officer here?

10 A. No.

11 Q. Okay. So would it be fair to say that the
12 duties of the first officer on the scene wouldn't apply
13 to you, you weren't the first officer on the scene?

14 MR. MULLIN: Object to the form.

15 A. It would depend, I would say.

16 Q. So your testimony here today is that you
17 looked to contain the situation, that's what you did to
18 implement ICS; is that right?

19 MR. MULLIN: Object to the form.

20 A. Yes, we were looking to contain.

21 Q. Now, did you ever have on scene any duties of
22 a supervising officer? Did you ever take charge of the
23 scene yourself?

24 A. I'm not sure exactly what you're asking there.

25 Q. Sir, I'm saying whether at any point during

1 this incident you considered yourself to be the
2 supervising officer or the officer in charge of the
3 scene?

4 A. Did I consider myself to be the supervising
5 officer, no.

6 Q. Okay. How about the officer in charge of the
7 scene?

8 A. I believe that that was fluid and evolving at
9 the time.

10 Q. Sir, did you at any point believe that you
11 were the supervising officer or the person in charge of
12 the scene?

13 A. Again, it depends on what your definition of
14 that would be.

15 Q. I'm asking what was in your mind, sir. Did
16 you ever consider yourself to be on March 4th, 2021
17 during this incident either a supervising officer or the
18 officer in charge or either the first -- either the first
19 officer on the scene or the supervising officer?

20 MR. MULLIN: Object to the form of the
21 questions.

22 A. I'm sorry. Can you ask the question again?

23 MR. ZUKHER: Madam?

24 (Requested portion read back.)

25 A. I would consider myself, when I was in contact

1 with the suspect, I was in charge of that specific scene.

2 Q. Okay. Did you -- we already asked this.

3 Would it be fair to say that you were one of the initial
4 responding officers?

5 A. I was not one of the initial responding
6 officers.

7 Q. Okay. Sir, did you ever request yourself a
8 dedicated radio channel for this incident during the time
9 that you were -- at that point in time when you
10 considered yourself to be that officer, did you ever take
11 steps to implement ICS?

12 A. I'm sorry. There are a couple questions
13 there.

14 Q. You said that at one point you did believe
15 that during the portion of this, you were the supervising
16 officer because you were the one that was directly in
17 touch with JLA, right?

18 MR. MULLIN: Object to the form.

19 MR. ZUKHER: Madam, would you read back
20 his response?

21 (Requested portion read back.)

22 BY MR. ZUKHER:

23 Q. Did you at that time implement ICS?

24 A. At that time, yes, we were working towards
25 implementing ICS.

1 Q. Did you at that time request additional
2 personnel, agencies, or resources -- any information from
3 additional personnel or other people or other resources
4 at that time?

5 A. When I had an armed suspect in front of me?

6 Q. Yeah.

7 A. I was -- no. I identified the direction of
8 travel and the suspect.

9 Q. Just a yes or no question I'm asking.

10 MR. MULLIN: No, that wasn't a yes or no.

11 MR. ZUKHER: Okay. Very good.

12 Q. Sir, did you request -- at that time, did you
13 request any additional personnel, agencies, or resources
14 for this incident?

15 A. Yes.

16 MR. MULLIN: At what --

17 Q. Okay. Who did you request?

18 A. I advised other units responding of his
19 location.

20 Q. What additional personnel did you request?

21 A. That would be the personnel that were not
22 directly at that scene, personnel that were moving south
23 towards my location.

24 Q. And what agencies or resources did you engage?

25 A. The Onondaga County Sheriff's Department, the

1 State Police, and other units from --

2 Q. And what did you say --

3 MR. MULLIN: Let him finish the question,
4 please, Counsel.

5 A. I just said the State Police, Onondaga County
6 Sheriff's Department, and other Dewitt units.

7 Q. Sir, with regard to your summary of this event
8 that occurred that we had marked as Plaintiff's
9 Exhibit 1, is -- are the words "ICS" contained within
10 that document?

11 A. In that document?

12 Q. Yeah.

13 A. No.

14 Q. Does it say anywhere in that document you
15 tried to gather additional resources or request
16 additional personnel, agencies, or resources, does it say
17 anything like that at all?

18 A. Not specifically.

19 Q. Thank you, sir. Does it say anywhere in there
20 that you requested a dedicated radio channel for this
21 incident?

22 A. No, but one was already established.

23 Q. What was the dedicated radio channel here?
24 You said there were multiple channels being used.

25 MR. MULLIN: Object to the form of the

1 question.

2 A. The dedicated channel was Channel 1. There
3 were multiple channels being used as other units were
4 adding themselves to the call.

5 Q. Okay. Did you ever make a request for a
6 dedicated channel yourself?

7 A. No. That had already been established.

8 Q. Okay. All I'm asking is if you ever made that
9 request yourself.

10 Now, the point at -- did you at any point that
11 you believed to be the -- did you at any point transfer
12 your command to anyone during this incident?

13 MR. MULLIN: Object to the form.

14 Q. Any command either perceived or actual, did
15 you at any point transfer your command to anyone?

16 MR. MULLIN: Object to the form.

17 A. Yes, command for the scene was transferred to
18 other individuals on scene when myself and Officer
19 Menard, or Investigator Menard, were transferred to the
20 hospital.

21 Q. When you were transported to the hospital, at
22 that point you transferred command, that's the point,
23 after JLA was dead?

24 A. Yes.

25 Q. Thank you, sir.

1 No other point in time did you transfer
2 command to anyone?

3 A. No.

4 Q. Who would have made the decision about a
5 command post, about establishing a command post, who
6 would have made that decision?

7 MR. MULLIN: Object to the form.

8 A. It would depend.

9 Q. Depend on what, sir?

10 A. Depend on the situation.

11 Q. Okay. In this situation, who should have made
12 this decision?

13 MR. MULLIN: Object to the form.

14 A. Again, that's conjecture. It depends on --

15 Q. You were one of the -- one of the responding
16 officers. You had direct contact with JLA. You said at
17 one point you had command.

18 MR. MULLIN: Object to the form. You're
19 arguing --

20 MR. ZUKHER: I haven't even finished
21 asking my question.

22 MR. MULLIN: My apologies.

23 MR. ZUKHER: Thank you. Now I don't even
24 know what I was going to ask. Thanks, man.

25

1 BY MR. ZUKHER:

2 Q. Whose decision would that have been here, to
3 establish a command post --

4 MR. MULLIN: Object to the form.

5 Q. -- if not yours?

6 MR. ZUKHER: I haven't even finished my
7 question.

8 A. It depends.

9 Q. Depends on what?

10 A. Depends on a myriad of different --

11 Q. Whose decision would that have been in this
12 case?

13 MR. MULLIN: Object to the form.

14 A. It would be -- it would depend on who
15 establishes command.

16 Q. And who established command here? You said at
17 one point you believe you had command, so I'm asking you:
18 Who made the decision to establish or not establish a
19 command post, who was responsible for that decision?

20 MR. MULLIN: Object to the form.

21 A. At the point where I was the contact officer,
22 I did not have the opportunity to establish a command
23 post, and it was irrelevant to the situation.

24 Q. Did you even try?

25 A. Did I try to establish a --

1 Q. Did you try to establish a command post, yes.

2 A. -- command post when somebody was aiming a gun
3 at me? No.

4 Q. No, sir. The minute you arrived on the scene,
5 somebody aimed a gun at you?

6 MR. MULLIN: Object to the form. Let's
7 take a break for a minute. This is getting
8 off the rails.

9 MR. ZUKHER: There's a pending question.

10 MR. MULLIN: Answer the question. Let
11 him answer it.

12 (Requested portion read back.)

13 MR. MULLIN: Answer that question.

14 THE WITNESS: No.

15 MR. ZUKHER: Thank you.

16 MR. MULLIN: Thank you.

17 (Off record: 12:11 p.m. to 12:18 p.m.)

18 BY MR. ZUKHER:

19 Q. Sir, what was your understanding as to who the
20 lead agency was in this incident?

21 A. I didn't know.

22 Q. Did you ever come to know?

23 A. I think you told me that it was the State
24 Police in the end.

25 Q. Would that have been the first person that

1 arrived, the first officer that arrives is typically the
2 lead agency?

3 A. Typically.

4 Q. Okay. And it would have been so in this case,
5 correct?

6 A. It depends.

7 Q. Depends on what?

8 A. Depends on who assumes control, who decides to
9 take the --

10 Q. But ultimately, as you sit here, at the time
11 that this was going on, you had no idea who the lead
12 agency was?

13 A. No.

14 Q. Or who the supervising officer in charge was?

15 A. No.

16 Q. At no time during this incident where you
17 pursued JLA over the course of close to an hour, did you
18 ever make a call to determine who the supervising officer
19 was?

20 MR. MULLIN: Object to the form of the
21 question.

22 A. I'm sorry. You said?

23 Q. Did you, yourself, throughout the duration of
24 this incident ever make a call and say, hey, who's in
25 charge here?

1 A. Did I make a telephone call, no.

2 Q. Or a dispatch call or anything? Police
3 officers, I guess, do use their cell phones but everybody
4 uses the radio. So did you ever use the radio or any
5 other means of communication to contact any other person
6 to say, hey, who's in charge here?

7 A. No, I did not.

8 Q. Okay. Are you aware whether the individual
9 that was with you -- who was that, that was --

10 MS. PAVESE: Matt Menard.

11 Q. Mr. Menard, whether he ever made a call to
12 determine who was in charge?

13 A. I don't believe he did, no.

14 Q. What steps did you, yourself, sir, take to
15 establish or to implement ICS?

16 A. I moved to contain the suspect, helped to
17 prevent any threats to the public or the suspect or other
18 parties.

19 Q. Did you, yourself, make any additional request
20 for additional personnel, agencies, or resources?

21 A. Again, in the aspect of when I considered
22 myself in control, when I was in the presence of the
23 suspect, yes, I did request -- I did tell other units our
24 location, to request units respond to that location.

25 Q. Okay. What other resources did you request?

1 A. Other officers.

2 Q. Is that contained within your narrative, that
3 you requested additional resources from other officers?

4 MR. MULLIN: Object to the form.

5 A. No, not specifically.

6 Q. Thank you, sir.

7 Did you, yourself, request that a dedicated
8 channel be used?

9 A. I did not, because one had already been
10 established.

11 Q. Okay. All I asked was: Did you make that
12 request? Okay.

13 Does it say in your narrative anything about
14 requesting that one channel, one channel be used?

15 A. No, because it was already established.

16 Q. Sir, all I said was --

17 MR. MULLIN: Please don't argue with the
18 witness. He's answered --

19 MR. ZUKHER: Instruct your witness to
20 answer my questions. All I asked was is it
21 contained in his narrative, not why it's not
22 contained in his narrative.

23 MR. MULLIN: Thank you.

24 MR. ZUKHER: You're welcome, sir.

25

1 BY MR. ZUKHER:

2 Q. Sir, did you ever formally transfer command to
3 any supervisor or commanding officer to take charge of
4 the scene?

5 A. What is formally -- what do you mean by
6 formally transfer command?

7 Q. One of your duties when you implement ICS is
8 under Subsection L, it says: Transfer incident command
9 to a supervisor or command officer who will be taking
10 charge of the scene. I'm asking you if you did that?

11 A. Control of the scene was transferred to
12 another party after I left the scene, yes.

13 Q. Does it say that in your narrative, sir, that
14 you ever transfer command here?

15 A. No.

16 Q. What was your plan, what was your action plan
17 that you developed?

18 A. The action plan was to contain the suspect and
19 develop communication.

20 Q. Does it say that in your narrative, sir?

21 A. Yes, it says that we both entered the woods
22 near the northwest corner of the residence --

23 Q. No.

24 MR. MULLIN: Let him finish the answer,
25 sir.

1 A. Observed JLA in the clearing to the west. We
2 began verbal commands to drop the gun. So yes, it was us
3 trying to open up dialogue and we radioed for other
4 units.

5 Q. Did you, yourself, sir, reach out to any
6 mental health professionals or mobile crisis units with
7 regard to this incident?

8 A. No.

9 Q. Under Number 6 of Duties of Supervising
10 Officer, it says: Organize and brief subordinate
11 personnel about the incident and their duties. Did you
12 debrief --

13 MR. MULLIN: Objection.

14 Q. -- anybody here about -- did you give
15 instructions to --

16 MR. ZUKHER: I haven't even finished my
17 question. The fourth time it's happened.

18 MR. MULLIN: My apologies. When you
19 stop, I assume you're done.

20 MR. ZUKHER: All right. Well, wait for
21 me to stop.

22 MR. MULLIN: That's a great idea. Thank
23 you.

24 BY MR. ZUKHER:

25 Q. Sir, did you ever give any directions to any

1 subordinate personnel with regard to this incident?

2 A. I would say telling individuals what the
3 location was, was giving direction.

4 Q. Does it say that, that you give any specific
5 directions besides those in your narrative?

6 A. Yes. Where it says that I explained that he
7 was traveling in the wooded area.

8 Q. I understand. That was your brief to your
9 subordinate personnel, is that your testimony here today,
10 that you told them he was in a wooded area, is that your
11 testimony here today?

12 MR. MULLIN: Object to the form.

13 Q. That your briefing of this was that JLA was in
14 a wooded area, is that your position, sir?

15 MR. MULLIN: Object to the form.

16 A. In a dynamic situation and what I had the
17 ability to convey for information and brief individuals,
18 yes. I'm not going to be -- call people into a group
19 of -- I don't have the time to say, hey, let's huddle up
20 and figure out what's going on.

21 Q. You had almost an hour here, sir.

22 MR. MULLIN: Object to the form.

23 Q. Almost an hour. You didn't have the time to
24 do that?

25 MR. MULLIN: Object to the form.

1 A. The point where you're indicating -- or that
2 I'm indicating that I felt that I was in charge was a
3 matter of minutes, it was not within an hour.

4 Q. Okay. So what did you do during those
5 minutes? Did you do any of these things that it says in
6 your manual?

7 A. I think I just walked through those with you.

8 Q. This manual is designed for a successful
9 resolution. Do you believe this incident had a
10 successful resolution?

11 MR. MULLIN: Object to the form.

12 A. That would depend on what the situation was.

13 Q. Sir, I'm asking you whether you feel that this
14 incident achieved a successful resolution as set forth in
15 your manual?

16 MR. MULLIN: Well, object to the form.

17 Q. That your manual calls for --

18 MR. MULLIN: Object to the form.

19 Q. -- that's set forth in your manual?

20 MR. ZUKHER: I haven't even finished my
21 question --

22 MR. MULLIN: You keep stopping.

23 MR. ZUKHER: -- for the fifth time.

24 BY MR. ZUKHER:

25 Q. Do you believe that it was a successful

1 resolution in this case?

2 MR. MULLIN: Object to the form.

3 A. It doesn't define what a successful resolution
4 is.

5 Q. I'm asking how you feel. I'm not asking what
6 it defines. I'm asking whether you feel this case was
7 brought to a successful resolution?

8 MR. MULLIN: Object to the form.

9 A. Again, it's -- I'm -- I don't understand
10 how --

11 Q. You don't know what a successful resolution
12 is, sir?

13 A. How do you define a successful resolution?

14 Q. It's defined within your guidelines. You're
15 supposed to be familiar with those guidelines. They are
16 applicable --

17 A. It does not define successful
18 resolution --

19 Q. Do you feel that this was a successful
20 resolution?

21 MR. MULLIN: Object to the form.

22 A. What's your definition of a successful
23 resolution?

24 Q. Do you feel you did good police work in this
25 case? That's successful resolution.

1 A. I feel I did appropriate police work.

2 Q. Do you feel you did good police work in this
3 case where you feel like there was good communication
4 between the parties here?

5 MR. MULLIN: Object to the form of the
6 question.

7 A. I believe there was adequate communication
8 among officers, yes.

9 Q. Okay. Sir, are you aware of whether any
10 agency on the scene or your agency had access to drones
11 or other type devices like that?

12 A. I believe State Police has access to drones.

13 Q. Are you aware whether that was -- whether that
14 device was employed in this incident?

15 A. I'm not aware.

16 Q. Did you ever see a drone yourself?

17 A. I did not see a drone.

18 Q. Okay. Did you ever inquire about a drone or a
19 drone operator?

20 A. I did not.

21 Q. Was there a negotiator that was there, a
22 formal negotiator that was put in place here to talk to
23 JLA?

24 A. There was a negotiator on scene, yes.

25 Q. Okay. Do you know whether he talked to JLA?

1 MR. MULLIN: Object to the form.

2 A. At the time, I did not.

3 Q. At the time of the shooting, you had no idea
4 whether or not the negotiator had even spoken to JLA or
5 what the results of those negotiations may have been or
6 not been?

7 A. Correct.

8 Q. Who was the -- strike that.

9 Who was the negotiator in this case?

10 A. I don't know if she was assigned as a
11 negotiator, but I know that Officer Wickes was.

12 Q. Do you know the full name of that officer,
13 sir?

14 A. Officer Stacey Wickes. Again, I don't know if
15 she was assigned as a negotiator, but I do know that she
16 has negotiating training.

17 Q. Okay. At the time that you discharged your
18 service weapon at JLA, had you even talked to Stacey
19 Wickes about JLA?

20 A. I did not.

21 Q. Did you know what the status was or was not of
22 any negotiations that had taken place at that time?

23 A. I knew that nobody was in contact with him,
24 and that he was traveling southbound, and he posed a
25 threat.

1 Q. How did you know that, sir, how did you know
2 that nobody had talked to him?

3 A. I didn't say nobody talked to him.

4 Q. You said nobody had been in contact with him,
5 so did you --

6 A. I said that nobody was in contact with him,
7 because he was traveling southbound.

8 Q. Okay.

9 A. Nobody had eyes on him. His last location was
10 behind a residence on Apulia Road.

11 Q. Did you know at any point that you arrived to
12 the scene and pursued him, did you know whether anybody
13 had talked to JLA?

14 A. I didn't know.

15 Q. Including Ms. Wickes?

16 A. I did not know.

17 Q. Did you ask yourself, did you say, hey, is
18 there a negotiator, has anybody talked to this kid; did
19 you say that?

20 A. No.

21 Q. Didn't get any of that information prior to
22 shooting?

23 A. No. My concern was containment first.

24 Q. I didn't ask you what your concern was. I
25 asked if you obtained the information or not.

1 MR. MULLIN: Please don't argue with the
2 witness.

3 MR. ZUKHER: Please instruct your witness
4 to answer my questions and I won't have to
5 argue with him.

6 MR. MULLIN: The question allowed him to
7 answer.

8 MR. ZUKHER: Clearly nonresponsive.

9 BY MR. ZUKHER:

10 Q. Did you, yourself, sir, either speak with any
11 mental health crisis individual or any doctor prior to
12 the shooting?

13 A. No.

14 Q. Were you aware, sir, that prior to -- this
15 incident commenced with St. Joseph's Mobile Crisis Team
16 Unit being on the scene. Were you aware that they were
17 involved in this incident?

18 A. Not specifically, no.

19 Q. At the time of the shooting, were you aware
20 that the Mobile Crisis Unit had been on scene and, in
21 fact, was looking for a pick-up order for JLA, was trying
22 to get a pick-up order out for JLA, were you aware of
23 that prior to your shooting?

24 MR. MULLIN: Multiple questions.

25 Objection.

1 Q. If you don't understand what I'm asking, you
2 can answer.

3 A. I don't recall.

4 Q. Don't recall whether you ever spoke to anyone
5 from MCO?

6 A. I didn't speak to anybody. I was answering
7 the other questions you asked whether I was aware. I
8 don't recall if I was aware.

9 Q. Okay. So you definitely didn't speak to
10 anybody from MCO, right? Are you aware whether
11 any -- anybody that you were aware of on the scene that
12 you had contact with that day, whether they spoke to
13 anybody from MCO?

14 A. I don't know.

15 Q. Did you observe anybody speaking to MCO?

16 A. No.

17 Q. Did you, yourself -- you had two prior
18 interactions with JLA, correct?

19 A. Yes.

20 Q. And you said that based on those interactions,
21 you believe that he had a mental illness?

22 A. No, I didn't say that.

23 Q. Or that there were some mental issue with him,
24 right?

25 MR. MULLIN: Object to the form.

1 A. No, I didn't.

2 Q. Did you at any point stop and say, hey, I
3 haven't heard from a supervising officer, maybe I should
4 make a call, did you ever do that?

5 A. No.

6 Q. Did you ever say, hey, nobody's giving me
7 directions on anything on this thing, maybe I need to get
8 some information, did you do that?

9 A. No.

10 Q. Did you ever even inquire whether there was
11 some negotiations going on, or whether Ms. Wickes had a
12 chance to speak with JLA, or whether there was some other
13 possibilities that things could continue without the use
14 of deadly force, did you ever make that call during the
15 entirety of the time that you were on the scene?

16 A. I'm sorry. What was the question?

17 Q. Strike the question.

18 You never made a call for a crisis negotiator
19 and never spoke to Ms. Wickes prior to discharging your
20 weapon?

21 A. No.

22 Q. And didn't speak with any other mental health
23 providers prior to discharging your weapon?

24 A. No.

25 Q. And didn't even know that MCO was on scene and

1 that's how this incident commenced?

2 MR. MULLIN: Object to the form.

3 A. Again, I don't recall.

4 Q. Okay. And don't recall ever finding out
5 anything about JLA before you shot him, that he had
6 mental health issues? Did anybody advise you that this
7 child was mentally ill prior to the time that you
8 discharged your weapon?

9 A. Did anybody --

10 Q. Advise you that this child had serious mental
11 health issues and had threatened suicide by cop before,
12 did anybody advise you of that, sir, prior to you
13 discharging your service weapon?

14 MR. MULLIN: Object to the form.

15 A. There were a couple questions there.

16 Q. No. It's all the same question.

17 MR. ZUKHER: Read it back, Madam.

18 (Requested portion read back.)

19 A. I don't recall.

20 MR. ZUKHER: Can I have this marked as
21 Exhibit 3?

22 (Exhibit 3 marked for identification.)

23 (Off record: 12:35 p.m. to 12:41 p.m.)

24 BY MR. ZUKHER:

25 Q. Sir, I'm going to show you what's been marked

1 as Plaintiff's Exhibit 3. Can you take a look at that
2 document, please, for me?

3 A. Yes.

4 Q. Let me know when you're ready.

5 A. Okay.

6 Q. Sir, have you ever seen this document before?

7 A. I don't recall seeing it before.

8 Q. Okay. Did you know that it existed?

9 A. The document itself, no. I know that there
10 was an understanding between Liberty Resources and --

11 Q. Prior to you discharging your weapon on
12 March 4th, 2021, were you aware of this memorandum of
13 understanding as part of the policies and procedures of
14 the Dewitt Police Department?

15 MR. MULLIN: Object to the form of the
16 question.

17 A. I was aware of an agreement between liberty
18 Resources and the Town of Dewitt.

19 Q. And you were aware of what the basis of that
20 agreement was?

21 A. Yes.

22 Q. Okay. Did you at any point during the
23 incident of March 4th, 2021 contact Liberty Resources as
24 per your protocols here?

25 MR. MULLIN: Object to the form.

1 A. I wouldn't say as per my protocols. No, I did
2 not make any contact with them.

3 Q. Sir, do you see Exhibit 3 that you're holding
4 in your hand, do you see almost down towards the bottom
5 of the page, it says: The undersigned agree to adhere to
6 the following policies, practices and protocols?

7 MR. MULLIN: That is not what it says.

8 Q. It says: The undersigned agree to adhere to
9 the following practices and protocols.

10 MR. MULLIN: That's more correct. Thank
11 you.

12 MR. ZUKHER: Thank you.

13 Q. Do you see where it says that, sir?

14 A. Yes.

15 Q. Were you aware of this policy and protocol on
16 March 4th, 2021?

17 MR. MULLIN: Object to the form.

18 A. Again, I was aware of the existence of it and
19 the working knowledge of working with Liberty Resources.

20 Q. Did you call Liberty Resources during the
21 incident of March 4th, 2021?

22 A. I did not.

23 Q. Are you aware that anybody else did that was a
24 member of the Dewitt Police or your agency?

25 A. I'm not aware.

1 Q. Were you trained with regard to this
2 memorandum, sir? Did you receive special training, or
3 did you receive this memorandum? How were you aware of
4 this memorandum?

5 MR. MULLIN: Object to the four
6 questions.

7 Q. Strike all four.

8 How were you aware of this memorandum?

9 A. I was aware that Liberty Resources was a tool
10 that could be utilized by us.

11 Q. But you did not utilize that tool?

12 A. I didn't call Liberty Resources, no.

13 Q. And nobody that you're aware of from the
14 Dewitt Police did, either, correct?

15 A. I don't know.

16 Q. Thank you, sir.

17 And I think I already asked you, sir, whether
18 you were aware that this incident commenced -- that when
19 this incident started at Ms. Albahm's residence, that the
20 Mobile Crisis Unit had been dispatched to that location.
21 Were you aware of that?

22 A. I don't recall.

23 Q. Okay. And you don't recall speaking to
24 anybody from the Mobile Crisis Unit from St. Joseph's?

25 A. I did not, no.

1 Q. Did anybody from the Mobile Crisis Unit at St.
2 Joseph's provide you with any information about JLA?

3 A. No.

4 Q. Are you aware of whether anybody from the
5 Mobile Crisis Unit at St. Joseph's provided either you or
6 anyone else with information about JLA throughout the
7 entirety of this incident?

8 A. I don't know.

9 Q. Thank you, sir.

10 Did you ever, yourself, prior to the shoot on
11 March 4th, 2021 ever see a pick-up order for JLA?

12 A. Did I specifically see a pick-up order, no.

13 Q. Okay. And I apologize. I might have asked
14 you, but it's getting late in the day. Did you,
15 yourself, reach out to either MCO or Liberty Resources?
16 When I refer to MCO, I mean that's St. Joe's.

17 A. No, I did not.

18 Q. Okay. Sir, were you aware whether on
19 March 4th, 2021 any K-9s were available either from the
20 Dewitt Police or any other responding agency?

21 A. I don't know.

22 Q. Did you ever inquire as to the availability of
23 a K-9 as a less lethal means to effectuate the result
24 that occurred here?

25 A. No, I did not.

1 Q. Was there any air support available that could
2 have observed JLA and given information to the police,
3 such as a helicopter?

4 A. I don't know.

5 Q. Did you, yourself, ever call for air support?

6 A. I did not.

7 Q. Did you inquire during this incident whether
8 air support was present and available?

9 A. I did not.

10 Q. Did you inquire to anyone as to what
11 negotiations were had with JLA?

12 A. I did not.

13 Q. Would it be fair to say, sir, you didn't
14 activate -- you, yourself, did not activate ICS or
15 implement ICS?

16 A. Again, if we're talking the point where I came
17 in contact with JLA, yes, it was implemented to a degree
18 and that we went through, notified personnel to come,
19 tried to establish communication.

20 Q. I understand. You, yourself, made -- you,
21 yourself, had a nonlethal on you at the time of the
22 shoot, correct?

23 A. I did.

24 Q. And other individuals on the scene, other law
25 enforcement on the scene, had non-lethals, as well,

1 correct?

2 A. They did.

3 Q. And you did not inquire or request
4 non-lethals, that somebody else bring some -- that
5 somebody else bring another non-lethal?

6 A. Yes, they did.

7 Q. Did you ask them to bring it? Did you ask
8 them to use those things?

9 A. I asked where they were.

10 Q. Okay. What else did you do besides asking
11 where they were?

12 A. I made contact with the suspect, worked
13 towards containment --

14 Q. No. I'm asking about --

15 MR. MULLIN: Object to the form. Let him
16 finish the answer.

17 MR. ZUKHER: It's nonresponsive.

18 MR. MULLIN: In your opinion.

19 MR. ZUKHER: Right, and the only way to
20 look at that.

21 BY MR. ZUKHER:

22 Q. Sir, I'm asking you whether you, yourself,
23 called anybody else to request additional non-lethals?

24 A. I worked towards containment so that less
25 lethal could be utilized, or in the event that less

1 lethal could be utilized.

2 Q. Carefully listen to my question. Did you,
3 yourself, call anyone to request additional non-lethals?

4 A. I called and identified the location of the
5 individual. I knew that non-lethal was present and I
6 told them directly travel in our location.

7 Q. Did you ask them to bring the non-lethal?

8 A. I asked where the non-lethal was, and that's
9 an implication of bring the non-lethal.

10 Q. I understand. You didn't use your own
11 non-lethal, correct?

12 A. I did not.

13 Q. Even though it was on your person and
14 available to you, correct?

15 MR. MULLIN: Object to the two questions.

16 Q. It was on your person, correct?

17 A. Yes.

18 Q. And it was available -- therefore, available
19 to you for use, correct?

20 A. It would not have been an effective tool.

21 Q. Okay. You just chose a different tool, but it
22 was available for you to use, correct?

23 A. It was available for me to use if it --

24 Q. Thank you.

25 MR. MULLIN: Go ahead, finish answering

1 the question.

2 A. It was available to use if the opportunity to
3 utilize less lethal was present or presented itself.

4 Q. I understand. Didn't call for a K-9, didn't
5 ask about a K-9 unit or inquire about a K-9 unit?

6 A. I did not. It was a rapidly-evolving
7 situation.

8 Q. The situation from the first phone call that
9 was made for the police was made around 12:25. Were you
10 aware of that, sir?

11 MR. MULLIN: Object to the form.

12 A. No, I'm not aware of when.

13 Q. There was police presence on the scene from
14 about 12:25 to about 1:15, when JLA was killed. The
15 police were on the scene for longer than an hour and a
16 half, did you know that?

17 A. I did not.

18 Q. And you, yourself, don't recall how long you
19 were there for, right?

20 A. No.

21 Q. Of course not.

22 MR. MULLIN: Please don't do the
23 commentaries.

24 Q. And you didn't ask anything about air support?

25 A. I did not.

1 Q. So would it be fair to say, sir, that you
2 arrived to the scene, pursued JLA into the woods and shot
3 him?

4 MR. MULLIN: Object to the form.

5 Q. Would that be fair to say?

6 A. No, it wouldn't be fair to say.

7 Q. Thank you, sir.

8 MR. ZUKHER: I have no further questions.

9 Let me talk to my paralegal. I have no
10 further questions.

11 (Brief discussion off the record.)

12 (Exhibit 4 marked for identification.)

13 BY MR. ZUKHER:

14 Q. I'm going to show you, sir, what's been
15 previously marked by the Court Reporter as Exhibit
16 Number 4. You can tear off that cover sheet.

17 A. (Witness complies.)

18 Q. I'm going to ask you to take a look at that
19 document and ask you if you've ever seen this document
20 before?

21 A. Yes, I have seen it briefly.

22 Q. Have you read and reviewed that document?

23 A. I briefly skimmed it when it first came out.

24 Q. Did you, yourself, make any objections to this
25 document formally?

1 MR. MULLIN: Object to the form.

2 Q. Did you make any formal objections to anyone,
3 including anyone at the Dewitt Police or anybody at the
4 State Police, with regard to any objection to what's
5 contained within this document?

6 MR. MULLIN: Object to the form.

7 A. I didn't make any formal objections, no.

8 Q. Thank you, sir.

9 I'm going to ask you to flip right to the
10 back, and I'm going to ask you to --

11 MR. MULLIN: Last page?

12 MR. ZUKHER: Mm-hmm, Page 27 and 28.

13 Q. I'm going to ask you -- go right to the
14 paragraph that starts: In each county, NYSP and other
15 law enforcement agencies should establish a protocol to
16 improve coordination during multi-agency calls. Do you
17 see where it says that?

18 A. Yes.

19 Q. Would you read that paragraph for me and look
20 up when you're done?

21 A. (Witness complies.)

22 MR. MULLIN: Where are you, Dave? I
23 don't know where you are.

24 Q. Just read the rest to the end and look up when
25 you're done.

1 A. Read it to you?

2 Q. No. No, sir, to yourself.

3 A. Okay.

4 Q. Sir, I'm going to start with the paragraph,
5 first paragraph -- let me ask you this in general. Do
6 you dispute anything that's in there?

7 MR. MULLIN: In where?

8 MR. ZUKHER: In that section that starts
9 with Each County.

10 MR. MULLIN: The paragraph you just asked
11 him to read?

12 MR. ZUKHER: I asked him to read from in
13 each county all the way to the end.

14 THE WITNESS: Oh, all the way to the end?
15 I just read that paragraph.

16 MR. MULLIN: He was just reading the
17 paragraph. Read the whole report.

18 MR. ZUKHER: No, no, not the whole
19 report.

20 MR. MULLIN: I mean the page. Relax,
21 relax, relax. You want the whole second page
22 read, too?

23 MR. ZUKHER: Please.

24 MR. MULLIN: Okay.

25 MR. ZUKHER: Two paragraphs, three

1 paragraphs.

2 THE WITNESS: Okay.

3 BY MR. ZUKHER:

4 Q. Sir, do you disagree with any of those
5 statements contained within what you just read?

6 MR. MULLIN: Object to the form.

7 A. Yes.

8 Q. Tell me which statements you disagree with,
9 sir?

10 MR. MULLIN: I'll continue the objection
11 to this, but go ahead.

12 A. I would say that there was a decent amount of
13 interagency coordination or communication.

14 Q. Let me stop you right there, sir. You
15 testified here today you did not know who was in command
16 of this incident. Do you believe that that's good
17 communication?

18 A. Yes, there was communication as far as where
19 people were located, what the last -- what the
20 description of the suspect was, what his direction of
21 travel was, the threat that he posed to the public, the
22 fact that he had what appeared to be a handgun in his
23 possession.

24 Q. How about the fact that the mom told Trooper
25 Fike and, in fact, dispatch said it, too, you said you

1 listened to the dispatch, that he had an airsoft gun?

2 MR. MULLIN: Object to the form.

3 MR. BANAS: Objection.

4 Q. How was that communicated?

5 A. They did not say that he had an airsoft gun.

6 Q. Okay. So you believe that communications here
7 were good, and that you were -- at one point, you claimed
8 to assume operational control of this situation for a
9 period of time, yet you did not know who the lead officer
10 in charge here was --

11 MR. MULLIN: Object to the form.

12 Q. -- and you didn't know who the first responder
13 was, and you didn't know whether MCO had arrived, you
14 believe that those are good communications, sir?

15 MR. MULLIN: Object to the five
16 questions.

17 A. Pertinent information was relayed in a
18 rapidly-evolving situation where we were working to
19 contain a suspect.

20 Q. The situation was over an hour --

21 A. And it was rapid --

22 Q. -- there's nothing rapid about it.

23 A. It was rapidly evolving throughout that hour.

24 Q. I understand. Over the course of an hour. I
25 understand.

1 What else do you disagree there with, sir?

2 MR. MULLIN: Just a continuing objection
3 to his agreement or disagreement with --

4 MR. ZUKHER: -- lodge a general objection
5 to the whole deposition.

6 MR. MULLIN: No, I wouldn't do that. I
7 wouldn't do that.

8 MR. ZUKHER: That's what's been happening
9 every time.

10 A. I believe that it kind of has a simplified
11 view of the situation in that we were still working on
12 containment of the suspect, and at that point in time,
13 like, as far as safety concerns for the public and others
14 involved, we were not at the point where we could
15 establish a perimeter. We needed to contain the suspect
16 prior to establishing a perimeter and developing a
17 command structure if that was appropriate.

18 MR. ZUKHER: Thank you, sir. I have no
19 further questions.

20 MR. MULLIN: Gentleman?

21 MR. BANAS: I have nothing.

22 MR. ZUKHER: See you tomorrow.

23 MR. SICKINGER: No questions.

24 MS. PAVESE: Dave, they may have
25 questions.

1 MR. ZUKHER: Oh, geez.

2 MR. MULLIN: They said no while you were
3 getting up. Off the record.

4 (Proceedings concluded at 1:02 p.m.)

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REPORTER'S CERTIFICATE

I, ELYSE M. ADDABBO, Court Reporter and
Notary Public, certify:

That the foregoing proceedings were taken before me
at the time and place therein set forth, at which time
the witness was put under oath by me;

That the testimony of the witness and all
objections made at the time of the examination were
recorded stenographically by me and were thereafter
transcribed;

That the foregoing is a true and correct transcript
of my shorthand notes so taken;

I further certify that I am not a relative or
employee of any attorney or of any of the parties nor
financially interested in the action.



ELYSE M. ADDABBO, Court Reporter
Notary Public

1 A C K N O W L E D G M E N T

2

3

4

5 I hereby certify that having been first duly sworn
6 to testify to the truth, I gave the above testimony on
7 January 10, 2024.

8

9 I FURTHER CERTIFY that the foregoing transcript is
10 a true and correct transcript of the testimony given by
11 me at the time and place specified.

12

13

14

15

16

LUCAS BYRON

17

18

19 Subscribed and sworn to before me

20 this ____ day of _____, 20____.

21

22

23 Notary Public

24

25

1 E R R A T A S H E E T

2 Deponent: LUCAS BYRON

3 Deposition Date: January 10, 2024

4 PAGE LINE CHANGE FROM/TO REASON FOR CHANGE

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18 Under penalties of perjury, I declare that I have read
19 the foregoing deposition and hereby affix my signature
that same is true and correct, except as noted above.20 _____
LUCAS BYRON DATE

21

22 Subscribed and sworn to before me
23 this _____ day of _____, 20____.

24

24 Notary Public

25

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